

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

August 17, 2010

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 09-50903

Conference Calendar  
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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARIO REYES-BURGOS, also known as Mario Burgos,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:09-CR-1363-1  
\_\_\_\_\_

Before DAVIS, SMITH, and WIENER, Circuit Judges.

PER CURIAM:\*

Mario Reyes-Burgos appeals the sentence imposed following his guilty plea conviction for illegal reentry following deportation in violation of 8 U.S.C. § 1326. Reyes-Burgos contends that his within-guidelines sentence was unreasonable because the district court failed to consider the unwarranted sentencing disparity that exists between defendants sentenced in the Western District of Texas, which does not have a fast-track program, and defendants sentenced in

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

districts that do have such a program. He concedes that his argument is foreclosed by circuit precedent but seeks to preserve the issue for further review.

As Reyes-Burgos concedes, his argument is foreclosed by *United States v. Gomez-Herrera*, 523 F.3d 554, 563 (5th Cir. 2008), where we held that the disparity caused by fast-track programs is not “unwarranted” and does not provide grounds for a sentence reduction. Accordingly, the district court’s judgment is AFFIRMED.