

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

United States Court of Appeals  
Fifth Circuit

**FILED**

August 2, 2011

Lyle W. Cayce  
Clerk

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No. 10-10909  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GABINO TOVIAS, JR.,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:10-CR-62-1

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Before WIENER, PRADO, and OWEN, Circuit Judges.

PER CURIAM:\*

Defendant-Appellant Gabino Tovias, Jr., pleaded guilty pursuant to a plea agreement to one count of conspiring to make false statements during the acquisition of a firearm and one count of being a felon in possession of a firearm. He was sentenced to a total of 120 months of imprisonment to be followed by three years of supervised release. On appeal, he challenges the district court's decision to impose a four-level enhancement under U.S.S.G. § 3B1.1(a) to his offense level for being an organizer or leader of criminal activity involving five

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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or more participants, arguing that the presentence report's findings establish that he was a leader or organizer of only three of the four other participants in the criminal association.

Our de novo review of the district court's application of the Guideline reveals no error. See *United States v. Moore*, 635 F.3d 774, 776 (5th Cir. 2011), *petition for cert. filed*, (June 13, 2011) (No. 10-11089). To warrant the four-level enhancement, a defendant need only be the leader or organizer of one other participant in a criminal association that involves at least five members. *United States v. Ronning*, 47 F.3d 710, 711-12 (5th Cir. 1995). It is not necessary that he lead or organize every other participant. *United States v. Curtis*, 635 F.3d 704, 720 (5th Cir. 2011), *petition for cert. filed*, (June 6, 2011) (No. 10-10931). Tovias concedes that he exerted control over three participants in the gun-buying scheme. That is more than sufficient to trigger application of the enhancement. Accordingly, the district court's judgement is AFFIRMED.