

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

United States Court of Appeals  
Fifth Circuit

**FILED**

August 20, 2013

Lyle W. Cayce  
Clerk

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No. 12-41034  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JULIAN HERNANDEZ AVELINO, also known as Humberto Manuel Hernandez,

Defendant-Appellant

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:11-CR-97-1

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Before HIGGINBOTHAM, SMITH, and GRAVES, Circuit Judges.

PER CURIAM:\*

Appealing the judgment in a criminal case, Julian Hernandez Avelino raises an argument that he concedes is foreclosed by *United States v. Newson*, 515 F.3d 374, 378-79 (5th Cir. 2008), which held that the Government may decline to move for an additional one-point reduction under U.S.S.G. § 3E1.1(b) based on the defendant's refusal to waive his right to appeal. Accordingly, the Government's motion for summary affirmance is GRANTED, its alternative

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.