

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

No. 13-40221
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 16, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JESUS MORA-FERNANDEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:12-CR-892-1

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before DAVIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:*

We previously affirmed Jesus Mora-Fernandez's sentence because his challenge to the denial of an additional one-level reduction under U.S.S.G. § 3E1.1(b) was foreclosed by our decision in *United States v. Newson*, 515 F.3d 374, 377-78 (5th Cir. 2008). *United States v. Mora-Fernandez*, 548 F. App'x 165, 166-67 (5th Cir. 2013). The Supreme Court granted certiorari, vacated

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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the judgment, and remanded “for further consideration in light of the position asserted by the Solicitor General in his brief for the United States filed on April 8, 2014.” *Tax-Garcia v. United States*, 134 S. Ct. 2291, 2292 (2014).

Amendment 775 to the United States Sentencing Guidelines, which became effective on November 1, 2013, provides that the Government should not withhold the additional one-level reduction under Section 3E1.1(b) based on interests not identified in that Guideline, such as whether the defendant agrees to waive the right to appeal. U.S.S.G. Manual, Supp. to App. C, Amendment 775, at 43 (2013). We applied Amendment 775 to a case on direct appeal where the error was preserved and the Government conceded error. *United States v. Palacios*, 756 F.3d 325 (5th Cir. 2014). We also noted that before that opinion was released, all judges on the court were consulted and agreed that if *Newson* could be interpreted as preventing us from applying Amendment 775 to cases pending on direct appeal, Amendment 775 had abrogated that conclusion. *Id.* at 326 n.1. We apply that same reasoning here.

We VACATE the judgment of the district court and REMAND for resentencing.