

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

United States Court of Appeals  
Fifth Circuit

**FILED**

December 17, 2013

\_\_\_\_\_  
No. 13-50165  
Conference Calendar  
\_\_\_\_\_

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARIANO CABALLERO-CRUZ,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:12-CR-295-1  
\_\_\_\_\_

Before DAVIS, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Appealing the judgment in a criminal case, Mariano Caballero-Cruz raises an argument that he concedes is foreclosed by *United States v. Villanueva-Diaz*, 634 F.3d 844, 852 (5th Cir. 2011), in which we held that speculation that an alien would not have been removed is not sufficient to establish the prejudice required for a collateral attack on removal proceedings. Caballero-Cruz also preserves for possible Supreme Court review a foreclosed challenge to *United*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 13-50165

*States v. Lopez-Ortiz*, 313 F.3d 225, 231 (5th Cir. 2002), in which we held that deportation errors involving discretionary relief do not violate due process.

Accordingly, the Government's motion for summary affirmance is GRANTED, its alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.