

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 20, 2020

Lyle W. Cayce
Clerk

No. 20-40148
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ALBERTO ALEJANDRO HERRERA-GONZALEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:19-CR-308-1

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges.*

PER CURIAM:*

Alberto Alejandro Herrera-Gonzalez appeals his sentence to 165 months of imprisonment and five years of supervised release following his guilty-plea conviction of conspiring to possess with intent to distribute more than 500 grams of methamphetamine. He contends that the United States

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Sentencing Guidelines represent an unconstitutional delegation of congressional authority. While Herrera-Gonzalez acknowledges this argument is foreclosed by *Mistretta v. United States*, 488 U.S. 361 (1989), he nevertheless seeks to preserve it.

The Supreme Court held in *Mistretta* that “Congress’ delegation of authority to the Sentencing Commission is sufficiently specific and detailed to meet constitutional requirements.” 488 U.S. at 374. Herrera-Gonzalez’s argument is indeed foreclosed, and summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

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