

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

April 21, 2022

Lyle W. Cayce  
Clerk

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No. 21-50268  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

ELIJIO GARCIA,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:15-CR-684-1

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Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges.*

PER CURIAM:\*

Elijio Garcia, federal prisoner # 31955-180, appeals the order denying his 18 U.S.C. § 3582(c)(1)(A)(i) motion for compassionate release, which the district court issued prior to our decision in *United States v. Shkambi*, 993

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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F.3d 388 (5th Cir. 2021). We review the denial for an abuse of discretion. *See United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020).

In *Shkambi*, 993 F.3d 388, 393 (5th Cir. 2021), we held that “neither the [U.S.S.G. § 1B1.13] policy statement nor the commentary to it binds a district court addressing a prisoner’s own motion under § 3582.” Although the Government argues that the district court was free to consider § 1B1.13, *see United States v. Thompson*, 984 F.3d 431, 433 (5th Cir. 2021), we agree with Garcia that the court abused its discretion by relying exclusively upon § 1B1.13(1)(A) and its commentary in denying relief. *See Ward v. United States*, 11 F.4th 354, 360 (5th Cir. 2021); *Shkambi*, 993 F.3d 388, 393.

We VACATE the order of the district court and REMAND for further proceedings consistent with this opinion.