

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-41299  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GILBERTO JUAN SOLIS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-99-CR-512-1  
- - - - -

October 18, 2000

Before SMITH, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Gilberto Juan Solis appeals his conviction following a guilty plea for conspiracy to possess with intent to distribute over 100 kilograms of marijuana. Solis argues that the Government breached the terms of the plea agreement because it orally recommended a sentence of 60 months but then was silent when the presentence report (PSR) recommended a sentencing range between 84 and 105 months. Solis also complains that the Government opposed his motion for a downward departure for being a minor or minimal participant.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Solis did not object to the Government's actions at sentencing; therefore, they are reviewed for plain error. See *United States v. Wilder*, 15 F.3d 1292, 1301 (5th Cir. 1994); *United States v. Goldfaden*, 959 F.2d 1324, 1327 (5th Cir. 1992). The Government did not breach the terms of the plea agreement. It recommended a three-level reduction for acceptance of responsibility and further recommended sentencing at an offense level of 23. The sentencing court followed these recommendations. The Government was not obliged by the terms of the agreement to object to the application of the sentencing range recommended in the PSR. See *United States v. Cantu*, 185 F.3d 298, 304 (5th Cir. 1999). Nor was the Government precluded from objecting to a downward adjustment in the offense level that would have put the offense level below 23. *Id.* Accordingly, the district court's judgment is AFFIRMED.