

United States Court of Appeals for the Fifth Circuit

No. 22-50359
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 12, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JULIO CESAR TERCERO GARCIA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:21-CR-360-1

Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:*

Julio Cesar Tercero Garcia pleaded guilty to conspiracy to possess with intent to distribute 50 grams or more of methamphetamine. He received a 135-month prison sentence and a five-year term of supervised release.

For the first time on appeal, Tercero Garcia challenges the condition of his supervised release which provides that, if the probation officer

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-50359

determines that Tercero Garcia presents a risk to another person, the probation officer may require Tercero Garcia to notify the person of that risk and may contact the person to confirm that notification occurred. Tercero Garcia contends that this condition constitutes an impermissible delegation of judicial authority to the probation officer. He concedes that his argument is foreclosed by our recent decision in *United States v. Mejia-Banegas*, 32 F.4th 450 (5th Cir. 2022), but he raises the issue to preserve it for further review. The Government has filed an unopposed motion for summary affirmance, asserting that Tercero Garcia's claim is foreclosed by *Mejia-Banegas*.

In *Mejia-Banegas*, we held that such a risk-notification condition did not impermissibly delegate judicial authority, plainly or otherwise. 32 F.4th at 451-52. The parties are thus correct that the issue is foreclosed, and the Government is correct that summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

The Government's motion for summary affirmance is GRANTED, and the district court's judgment is AFFIRMED.