

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**JAN 10 2000**

**PATRICK FISHER**  
Clerk

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

FELIPE VEGA SUAREZ, also known  
as Gerardo Lopez-Guerrero,

Defendant-Appellant.

No. 99-2244  
(D.C. No. CR-99-17-HB)  
(D. N.M.)

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**ORDER AND JUDGMENT\***

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Before **TACHA**, **McKAY**, and **PORFILIO**, Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

The defendant appeals the district court's denial of his request for a downward departure. We dismiss for lack of appellate jurisdiction.

The defendant was convicted, following the entry of a guilty plea, of unlawful reentry of a deported alien. The defendant moved for a downward departure arguing that his criminal history category over-represents the seriousness of his criminal history, *see* U.S.S.G. § 4A1.3. The district court sentenced the defendant within the guideline range as set forth in the pre-sentence report.

On appeal, the defendant recognizes that under the law in this circuit a defendant may not appeal the district court's discretionary refusal to grant a downward departure. *See United States v. Fortier*, 180 F.3d 1217, 1231 (10th Cir. 1999) (noting that it is settled law in this circuit and others that a district court's discretionary refusal to depart downward from the guidelines is not appealable).

Rather, the defendant argues that this court should reconsider this position. However, a three-judge panel cannot disregard or overrule circuit precedent. *See United States v. Foster*, 104 F.3d 1228, 1229 (10th Cir. 1997).

Accordingly, this appeal is **DISMISSED**. The mandate shall issue forthwith.

Entered for the Court

Deanell Reece Tacha  
Circuit Judge