

requested.

Despite the liberal construction this court gives to plaintiff's motion, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *McBride v. Deer*, 240 F.3d 1287, 1290 (10th Cir. 2001), the court agrees with the government. Federal Rule 35 sets out limited circumstances under which this court may correct or reduce a sentence, which include (a) within seven days of sentencing to correct clear error; or (b) on the government's motion for substantial assistance. None of these circumstances apply here.

Moreover, even if the court could adjust his sentence, defendant's arguments under *United States v. Restrepo*, 802 F. Supp. 781 (E.D.N.Y. 1992), do not entitle him to the adjustment he seeks. In that case, the district court held that a downward departure from the applicable guideline sentence was appropriate for defendant Restrepo, a permanent resident alien, because defendant would serve a sentence under circumstances more severe than those facing citizens under similar circumstances based on his status as a deportable alien. The Second Circuit vacated the sentence and remanded for resentencing, holding that, although "collateral consequences of a defendant's alienage" might provide a valid basis for departure if "extraordinary in nature or degree," the bases raised by Restrepo and relied on by the district court did not justify the departure. These are the same bases defendant attempts to raise in the instant case. *See United States v. Restrepo*, 999 F.2d 640, 645 (2d Cir. 1993). Based on the holding and rationale set out in that opinion, defendant is not entitled to relief. *Id.* at 644–47.

IT IS THEREFORE ORDERED that defendant's Motion for Sentencing Adjustment (Doc. 61) is denied.

Dated this 5th day of November 2009, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge