

April 17, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-10685  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BERNARDO GRANADO-VELASQUEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 6:06-CR-2-ALL  
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Before HIGGINBOTHAM, BENAVIDES, and PRADO, Circuit Judges.

PER CURIAM:\*

Bernardo Granado-Velasquez (Granado) appeals his sentence following his guilty-plea conviction of illegally reentering the United States after having been removed, in violation of 8 U.S.C. § 1326(a) and (b)(2). The district court sentenced Granado to 120 months in prison, which was well above the 46-to-57-month advisory guidelines imprisonment range calculated by the Probation Office in Granado's Presentence Report.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Granado contends that the district court (1) violated FED. R. CRIM. P. 32(h) and Burns v. United States, 501 U.S. 129 (1991), by failing to notify the parties that it was considering a sua sponte upward "departure" from the guidelines range and (2) failed to adhere to the methodology prescribed in U.S.S.G. § 4A1.3 for calculating the extent of such a "departure." Granado's sentence was imposed after the issuance of United States v. Booker, 543 U.S. 220 (2005), and the district court deemed the above-the-guidelines-range sentence a "variance" rather than a "departure." Granado's arguments are foreclosed by United States v. Mejia-Huerta, \_\_\_ F.3d \_\_\_, No. 05-11391, 2007 WL 610973 at \*\*5-7 (5th Cir. Feb. 28, 2007).

The sentence is AFFIRMED.