

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED
July 29, 2009

No. 08-51100
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ENRIQUE GUTIERREZ-GARCIA, also known as Enrique Gutierrez-Hernandez,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:08-CR-1247-ALL

Before DAVIS, GARZA and PRADO, Circuit Judges.

PER CURIAM:*

Gutierrez-Garcia appeals the 48-month sentence imposed following his guilty plea conviction for illegal reentry in violation of 8 U.S.C. § 1326. He contends that his sentence is not entitled to a presumption of reasonableness because it was calculated pursuant to U.S.S.G. § 2L1.2, which he argues is not supported by empirical evidence. Gutierrez-Garcia further contends that his sentence was greater than necessary to accomplish the goals of sentencing listed in 18 U.S.C. § 3553(a)(2).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Gutierrez-Garcia's contention that his sentence is not entitled to a presumption of reasonableness because the relevant guideline is not supported by empirical evidence is without merit. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 363-64 (5th Cir. 2009). His sentence is presumptively reasonable. *See United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006). Moreover, the district court addressed the factors set out at 18 U.S.C. § 3553(a) when imposing his sentence. Gutierrez-Garcia has failed to rebut the presumption of reasonableness.

AFFIRMED.