

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-40135  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN MANUEL CASILLAS-LLAMAS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. M-98-CR-333-01  
- - - - -

August 26, 1999

Before KING, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Juan Manuel Casillas-Llamas argues that the district court did not address his request for an additional downward departure based on cultural assimilation and that this inaction constitutes a violation of Fed. R. Civ. P. 32.

The Rule 32 violation is harmless because this court may not review the denial of an additional downward departure when there is no evidence that the district court refused to depart downward under the mistaken belief that it could not legally do so. See

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Peguero v. United States, 119 S. Ct. 961, 965 (1999); United States v. Valencia-Gonzales, 172 F.3d 344, 346 (5th Cir. 1999); United States v. Aggarwal, 17 F.3d 737, 745 (5th Cir. 1994). The district court's silence on the motion for a downward departure based on cultural assimilation is construed as an implicit denial. See Aggarwal, 17 F.3d at 745. Therefore, Casillas' sentence is AFFIRMED.

The Government has moved to dismiss the appeal and cites United States v. Reyes-Nava, 169 F.3d 278, 280 (5th Cir. 1999). However, Reyes-Nava is not applicable to this case, and the issue was not wholly frivolous. Therefore, the motion to dismiss the appeal is DENIED.

AFFIRMED. MOTION TO DISMISS is DENIED.