

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-50003  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ESEQUIEL DE LA ROSA-SORIA

Defendant - Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. DR-99-CR-499-ALL-WWJ  
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October 15, 2001

Before KING, Chief Judge, and HIGGINBOTHAM and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Esequiel De La Rosa-Soria appeals his sentence following his guilty-plea conviction for illegally reentering the United States after having been previously deported, in violation of 8 U.S.C. §§ 1326(a) and (b)(2). De La Rosa argues that the district court erred in determining that his cultural assimilation into this country is not a legally permissible ground for downward departure under the U.S. Sentencing Guidelines.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because "cultural assimilation is a permissible basis for downward departure," we VACATE De La Rosa's sentence and REMAND to the district court for a determination whether De La Rosa is entitled to a downward departure on the basis of cultural assimilation. See United States v Rodriguez-Montelongo, \_\_\_ F.3d \_\_\_ (5<sup>th</sup> Cir. Aug 23, 2001, No. 00-51023), 2001 WL 958907, \*4.

De La Rosa has filed an unopposed motion for leave to file a supplemental brief in which he seeks to raise, for the first time on appeal, an additional issue based on the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). The Government has also filed an unopposed motion for leave to file a supplemental brief which seeks to address De La Rosa's new Apprendi argument. Both motions are denied without prejudice to De La Rosa's right to raise his Apprendi issue in the district court at resentencing.

SENTENCE VACATED; REMANDED FOR RESENTENCING; MOTIONS DENIED.