

December 27, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-20405
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ELENA GUTIERREZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:05-CR-279-3

Before JOLLY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Elena Gutierrez pleaded guilty to one charge of conspiracy to transport aliens within the United States for financial gain. She appeals her 24-month sentence and argues that the district court gave insufficient notice of its intent to upwardly depart at sentencing. This issue is, as she concedes, reviewed for plain error only due to her failure to object to the alleged error in the district court. See United States v. Jones, 444 F.3d 430, 433 (5th Cir. 2006). Gutierrez has not shown that the district court would have imposed a lesser sentence if she had

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

received advance notice of its intent to depart. Consequently, she has failed to establish plain error. See id. at 443. The judgment of the district court is AFFIRMED.