

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-20496

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HERMAN OCHOA-ROZAS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-02-CR-0015-1  
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December 23, 2002

Before DAVIS, JONES and STEWART, Circuit Judges.

PER CURIAM:\*

Herman Ochoa-Rozas (Ochoa) appeals his 57-month sentence imposed following a guilty plea to illegal reentry into the United States following deportation. 8 U.S.C. § 1326(a), (b)(2). For the first time on appeal, Ochoa challenges the district courts's upward departure from the Sentencing Guidelines. See U.S.S.G. § 4A1.3, p.s. There is no error, plain or otherwise, in the district court's decision, as counsel undoubtedly understood when remaining silent at the announcement of an upward departure.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court's reasons for departing upward were acceptable and the extent of the departure was reasonable. See United States v. Route, 104 F.3d 59, 64 (5th Cir. 1997). The upward departure was not an abuse of discretion. See United States v. Winters, 174 F.3d 478, 482 (5th Cir. 1999).

**AFFIRMED.**