

April 23, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50634
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MONICA CERDA, also known as Monica Lopez,

Defendant-Appellant.

(Consolidated with)

No. 02-50697
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT LOPEZ,

Defendant-Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. SA-01-CR-643-2-FB
USDC No. SA-01-CR-643-1

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

In this consolidated appeal, Monica Cerda (Cerda) and Robert Lopez (Lopez) appeal their sentences for aiding and abetting the commission of mail fraud, in violation of 18 U.S.C. §§ 2, 1341. They argue that the district court erred in failing to adequately consider whether their conduct was accounted for in the Sentencing Guidelines. Specifically, they argue for the first time on appeal that the district court failed to consider U.S.S.G. § 2B1.1(b)(7)(A) which provides for an enhancement when an offense involves "a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency." To the extent that the court departed on the basis of their criminal history, they argue that the departure was erroneous. Finally, they argue that the extent of the departure was unreasonable.

We have carefully reviewed the records and find no reversible error in the district court's decision to depart upward or in the extent of the departure. See United States v. Davenport, 286 F.3d 217, 220 (5th Cir. 2002); United States v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Nevels, 160 F.3d 226, 230 (5th Cir. 1998); United States v. Lara,
975 F.2d 1120, 1126 (5th Cir. 1992). AFFIRMED.