

May 17, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 05-50988  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILMER BARAHONA-REYES,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:05-CR-5-1  
-----

Before KING, DeMOSS, and PRADO, Circuit Judges.

PER CURIAM:\*

Wilmer Barahona-Reyes (Barahona) appeals the sentence imposed following his guilty-plea conviction of aiding and abetting conspiracy to smuggle, transport, and harbor aliens, and aiding and abetting harboring illegal aliens for financial gain. Barahona argues that the district court clearly erred by imposing a two-level upward adjustment pursuant to U.S.S.G. § 3B1.1(c) when calculating the advisory guidelines range. He contends that the evidence before the district court shows that his role in the

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

offense was equal to that of his co-defendants and does not establish that he supervised or managed their actions.

We agree that the evidence before the district court does not establish Barahona's management or supervision of other participants in the offense as required to apply the enhancement in § 3B1.1(c). See United States v. Jobe, 101 F.3d 1046, 1068 (5th Cir. 1996). Accordingly, we VACATE Barahona's sentence and REMAND to the district court for resentencing. See United States v. Duhon, 440 F.3d 711, 716 (5th Cir. 2006).