

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 13, 2007

No. 07-40444
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff–Appellee

v.

ARTEMIO JAVIER GONZALEZ

Defendant–Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:06-CR-784-ALL

Before HIGGINBOTHAM, STEWART, and OWEN, Circuit Judges.

PER CURIAM:*

Artemio Javier Gonzalez appeals the 27-month sentence imposed following his guilty plea conviction for transporting unlawful aliens in violation of 8 U.S.C. § 1324. The district court departed upwardly from a range of 6 to 12 months to a sentence of 27 months, apparently based on prior arrests. As Gonzalez concedes, our review is limited to plain error. See *United States v. Jones*, 489 F.3d 679, 681 (5th Cir. 2007).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

It is plain error for a district court to depart upwardly based solely on a prior arrest record. *Id.* at 681; see also *United States v. Jones*, 444 F.3d 430, 434-37 (5th Cir. 2006), cert. denied, 126 S. Ct. 2958 (2006). Given the Government's concession of reversible plain error, we VACATE the sentence imposed and REMAND this matter for resentencing. We express no opinion on whether a non-guidelines sentence above the advisory range or an upward departure may be appropriate on some other basis.

Because this appeal has been expedited, our rules require issuance of the mandate forthwith automatically. See 5TH CIR. R. 41.4. Thus, the motion for summary disposition and issuance of the mandate forthwith is DENIED AS UNNECESSARY.