

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 21, 2011

Lyle W. Cayce
Clerk

No. 10-50927

Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HUMBERTO ACUNA-ZARATE,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:10-CR-1367-1

Before JONES, Chief Judge, and STEWART and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Humberto Acuna-Zarate (Acuna) was convicted of attempted illegal reentry and false claim of United States citizenship. *See* 8 U.S.C. § 1326; 18 U.S.C. § 911. Acuna contends in this appeal that the sentence imposed was unreasonable. This court reviews the reasonableness of a district court's sentencing decision for an abuse of discretion. *Gall v. United States*, 552 U.S. 38, 51 (2007). “[A] sentence within a properly calculated Guideline range is

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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presumptively reasonable.” *United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006).

Acuna argues that the district court abused its discretion in determining whether his guidelines range was greater than necessary by failing to consider the disparity between defendants who cannot avail themselves of a fast-track program and defendants in other districts who can avail themselves of such a program. The disparity between districts with fast-track programs and districts without them was intended by Congress and thus is not “unwarranted.” *United States v. Gomez-Herrera*, 523 F.3d 554, 562-63 (5th Cir. 2008). Accordingly, defendants like Acuna who are sentenced in districts without fast-track programs are not entitled to sentence reductions based on the disparity. *See id.* Acuna recognizes that this issue is foreclosed by *Gomez-Herrera*; he raises the issue to preserve it for possible Supreme Court review. The judgment of the district court is AFFIRMED.