

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2088
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

YOLANDA C. LARA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-H-90-0135(2))

(January 31, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Based on an upward departure, the district court resentenced Lara to 87 months imprisonment after remand from an identical sentence which this court had vacated. United States v. Lara, 975 F.2d 1120 (5th Cir. 1992). Lara pleaded guilty to three counts of harboring illegal aliens and three counts of transporting aliens. She contends only that the district court violated the ex

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

post facto clause by applying 1992 Sentencing Guideline Amendments retrospectively to her offenses committed in 1990.

Appellant's argument misperceives the district court's approach at resentencing. The court clearly stated that it looked "for guidance" to the amended guideline that provides a four-level increase if the offense involved the smuggling or harboring of more than 24 but fewer than 100 aliens. Lara does not contest the court's finding that her offenses involved at least 40 aliens. This court has previously noted that an upward departure should extrapolate from other guideline levels or principles or analogies drawn therefrom whenever possible. See Lara, 975 F.2d at 1126. The district court thus appropriately added a four-level enhancement on the basis of the number of aliens involved to the other grounds for departure evidenced by Lara's use of extortion in the offense and her co-defendant's use of a weapon. The court's application of the Guidelines was legally correct, and her exercise of discretion unimpeachable.

The sentence is AFFIRMED.