

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10966
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

VICTOR PUAC-ZAMORA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(1:94-CR-018-C-01)

(May 23, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:¹

Victor Puac-Zamora appeals from his conviction and sentence for nine counts of transporting illegal aliens in violation of 8 U.S.C. § 1324(a)(1)(B). We **AFFIRM**.

I.

On May 20, 1994, Puac-Zamora (Zamora) was driving a white van carrying nine illegal aliens near Clyde, Texas, on Interstate Highway 20 when he was stopped by United States Boarder Patrol Agent Jose Guerrero. Zamora, who was headed east toward North

¹ Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

Carolina, was arrested and charged with nine counts of transporting illegal aliens. Claiming that Agent Guerrero did not have sufficient grounds to stop the vehicle, Zamora filed a pre-trial motion to suppress evidence obtained from the stop. The district court denied the motion, and a jury convicted him on all counts. The district court then sentenced Zamora to, *inter alia*, fourteen months imprisonment.

II.

Zamora challenges the denial of his suppression motion. Viewing the evidence in the light most favorable to the Government, we review the district court's factual findings for clear error; its conclusions of law, *de novo*. *E.g.*, ***United States v. Tellez***, 11 F.3d 530, 532 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 1630 (1994).

A Border Patrol agent may make a temporary, investigative stop of a vehicle if specific, articulable facts, and the rational inferences drawn from those facts, reasonably warrant suspicion that the vehicle is engaged in illegal activities. ***United States v. Casteneda***, 951 F.2d 44, 46-47 (5th Cir. 1992). In assessing reasonable suspicion, we examine "the totality of circumstances as understood by those `versed in the field of law enforcement'". ***United States v. Diaz***, 977 F.2d 163, 164-65 (5th Cir. 1992) (quoting ***United States v. Cortez***, 449 U.S. 411, 418 (1981)). Factors to be considered include the characteristics of the area, its proximity to the border, usual traffic patterns, the agent's previous experience with criminal traffic, information about recent

illegal border crossings in the area, the characteristics of the vehicle, and the behavior of the driver. ***United States v. Brignoni-Ponce***, 422 U.S. 873, 884-85 (1975).

To support his stop, Agent Guerrero articulated specific facts regarding the vehicle, its location, and its occupants, as follows. A nine-year Border Patrol veteran, he was patrolling Interstate 20 in an unmarked vehicle when he spotted the appellant's vehicle, a large, older-model van, travelling east. This type vehicle is commonly used to conceal and transport illegal aliens. The van had no rear seats and appeared to be heavily loaded; and he could see persons' feet and hands in the rear of the van. Guerrero also noted that the van's rear license plate was from Florida; the front plate read "Guatemala". The van's west to east route is a common route for the traffic of illegal aliens, and Guerrero had recently received intelligence information from anti-smuggling units that illegal aliens from Guatemala were being moved from the western part of the United States around Arizona to the eastern part of the United States, mainly Florida and North Carolina. Guerrero described the driver and front seat passenger as Hispanic males who appeared to be illegal aliens because of their unkempt appearance. The men were unshaven and their hair and clothes were disheveled.

Zamora contends that Agent Guerrero lacked a reasonable suspicion to stop his van. Zamora notes that the vehicle, when stopped and searched in Clyde, Texas, was a substantial distance

from the border,² and that each of the reasons articulated by Agent Guerrero regarding the van, its direction, and the occupants' appearance were consistent with poor migrant workers travelling from one farming region to another.

Our opinion in *United States v. Varela-Andujo*, 746 F.2d 1046 (5th Cir. 1984), is instructive. In *Varela-Andujo*, a pickup truck was stopped while traveling east on Interstate 10 near San Antonio, Texas, over 170 miles from the Mexico border. *Id.* at 1047. The three passengers in the truck were "obviously Mexican-American", and two of the passengers appeared "disheveled". *Id.* The route was often used to transport illegal aliens and the Border Patrol agent was experienced in apprehending those who transport illegal aliens along this stretch of the interstate. *Id.* at 1048. The agent, who was driving an unmarked automobile, noticed that a substantial portion of the bed of the truck was covered by a piece of plywood and a tarpaulin, and at least one person was lying under the tarpaulin. *Id.* We concluded that, considering all the factors, especially the makeshift arrangement in the rear of the truck, the agent had reasonable suspicion to stop the truck. *Id.*

As in *Varela-Andujo*, the distance from the border is not dispositive. See also *United States v. Salazar-Martinez*, 710 F.2d 1087, 1088 (5th Cir. 1983). And in view of the totality of the circumstances, we conclude that the evidence supported Agent

² We take judicial notice that Clyde, Texas, is a substantial distance from the nearest border entry point. *United States v. Inocencio*, 40 F.3d 716, 722 n.7 (5th Cir. 1994) ("[v]ehicles traveling more than fifty miles from the border are usually a 'substantial' distance from the border").

Guerrero's reasonable suspicion. See **United States v. Salazar-Martinez**, 710 F.2d 1087 (5th Cir. 1983) (upholding stop under circumstances similar to present case).

B.

The base offense level for transporting an illegal alien is nine. U.S.S.G. § 2L1.1(a)(2). If, however, the defendant committed the offense "other than for profit", the base offense is decreased by three levels. U.S.S.G. § 2L1.1(b)(1). Zamora contends that the district court erred when it found that he had engaged in the transportation of the aliens for a profit, rather than as a favor. Zamora bears the burden of proof to show the lack of profit motive. **United States v. Cuellar-Flores**, 891 F.2d 92, 93 (5th Cir. 1989). We review the district court's finding for clear error. **United States v. Fitzhugh**, 984 F.2d 143, 146 (5th Cir.), cert. denied, 114 S. Ct. 259 (1993).

The guideline commentary defines "for profit" to mean "for financial gain or commercial advantage"; it "does not include a defendant who commits the offense solely in return for his own entry or transportation." U.S.S.G. § 2L1.1, comment. (n.1). Two of the illegal aliens testified that they agreed to pay Zamora an unspecified sum of money when they found work in North Carolina. Another testified that the passengers "had to help [Zamora] with the gas".³ In view of this evidence, the district court did not clearly err in concluding that Zamora failed to meet his burden of

³ Zamora was traveling to North Carolina with or without the illegal alien passengers. Therefore, he would realize "financial gain" by having his passengers "help him with the gas".

proving that he had no profit motive.

III.

For the foregoing reasons, the judgment is

AFFIRMED.