

October 25, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 06-40014  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CESAR ARMANDO LEAL-RIVERA,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:02-CR-154  
-----

Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:\*

Cesar Armando Leal-Rivera pleaded guilty to illegal reentry and was sentenced to 28 months of imprisonment to be followed by a two-year term of supervised release. He now appeals the 24-month sentence imposed following the revocation of his term of supervised release.

Leal argues that the district court imposed a sentence above the statutory maximum. He contends that the top of the sentencing guidelines range found applicable by the district court, rather than the statutory maximum under 8 U.S.C.

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 1326(b), governs the classification of his underlying felony for purposes of revocation of supervised release.

In United States v. Alfaro-Hernandez, 453 F.3d 280, 281-82 (5th Cir. 2006), the court held that, in determining the statutory maximum penalty that can be imposed upon revocation of supervised release, the felony classification of the defendant's underlying offense was to be determined by statute and not by the Sentencing Guidelines. Leal acknowledges that his argument is foreclosed by Alfaro-Hernandez, but he wishes to preserve the argument for possible further Supreme Court review.

The sentence is AFFIRMED.