

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 08-13794  
Non-Argument Calendar  
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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT December 18, 2008 THOMAS K. KAHN CLERK
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D. C. Docket No. 07-10044-CR-KMM

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ISRAEL GUERRA GONZALEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Florida  
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(December 18, 2008)

Before BLACK, BARKETT and PRYOR, Circuit Judges.

PER CURIAM:

Israel Guerra Gonzalez appeals his sentence of 24 months of imprisonment

for conspiring to induce aliens to enter the United States and unauthorized entry into Cuban territorial waters. 8 U.S.C. § 1324(a)(1)(A)(v)(I); 50 U.S.C. § 192. Guerra Gonzalez challenges the three-level enhancement of his sentence for creating a substantial risk of death or serious bodily injury. We affirm.

We review de novo the application of the risk of death or serious injury enhancement to a sentence. United States v. Rodriguez-Lopez, 363 F.3d 1134, 1137 (11th Cir. 2004). The decision that Guerra Gonzales created a risk of death or serious injury to the aliens he transported is a factual finding that we review for clear error. Id. A district court may enhance a sentence by three levels if the defendant created, either intentionally or recklessly, a substantial risk of death or serious injury to the illegal aliens who he smuggled or transported and the total offense level is less than eighteen. United States Sentencing Guidelines § 2L1.1(b)(6) (Nov. 1997). The commentary to section 2L1.1(b)(6) “emphasizes that [the] provision applies to an array of factual scenarios and should be applied flexibly[.]” Rodriguez-Lopez, 363 F.3d at 1138; U.S.S.G. § 2L1.1(b)(6) cmt. n.5 (“[r]eckless conduct to which the adjustment from subsection (b)(6) applies includes a wide variety of conduct”).

The district court did not clearly err when it found that Guerra Gonzalez created a substantial risk of death or serious bodily injury. Guerra Gonzalez

attempted to smuggle twelve aliens from Cuba to the Florida keys on a boat equipped with only five life vests. The aliens would have in all likelihood died or suffered serious injuries if they had fallen overboard in the open seas without a flotation device. The application of the enhancement is consistent with the instruction to apply the enhancement flexibly.

Guerra Gonzalez's sentence is **AFFIRMED**.