

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 11-2824

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United States of America,

Appellee,

v.

Jose Manuel Ovalle-Garcia,  
also known as Jose Manuel Ova-  
Garcia, also known as Victor  
Manuel Lopez,

Appellant.

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Appeal from the United States  
District Court for the District  
of Minnesota.

[UNPUBLISHED]

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Submitted: May 14, 2012

Filed: June 1, 2012

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Before SMITH, ARNOLD, and COLLOTON, Circuit Judges.

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PER CURIAM.

Jose Ovalle-Garcia appeals from the sentence of 41 months' imprisonment that the district court<sup>1</sup> imposed on him for illegally entering the country after removal. *See* 8 U.S.C. § 1326(a), (b)(2). Mr. Ovalle-Garcia contends that, unlike most people who commit his offense, he had not returned to the United States to join family members

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<sup>1</sup>The Honorable Paul A. Magnuson, United States District Judge for the District of Minnesota.

and in fact intended to return to Guatemala and live there permanently with his wife after earning enough money in the United States to pay her medical bills. He maintains that the unlikelihood that he will re-offend distinguishes his case from the usual one and thus his sentence was unreasonable.

But, as Mr. Ovalle-Garcia concedes, the sentence that he received was at the low end of the guideline range of 41 to 51 months' imprisonment to which he was subject, and a sentence within the applicable range is presumed reasonable. *United States v. Struzik*, 572 F.3d 484, 487 (8th Cir. 2009). Here, the district court was cognizant of Mr. Ovalle-Garcia's argument for a variance from the guideline range, considered it, and specifically rejected it on the record, holding that the relevant facts of the case were of the kind that the guidelines contemplated. The likelihood that a defendant will re-offend is no doubt a proper consideration in fixing a sentence, but the case here is not so strong as to require a finding that it is outside the cases for which the applicable guidelines were designed. We discern no abuse of discretion in rejecting Mr. Ovalle-Garcia's argument and therefore conclude that the sentence was reasonable.

Affirmed.

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