

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 18, 2010

Charles R. Fulbruge III
Clerk

No. 09-10538

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ERNESTO HERNANDEZ-PEREZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:08-CR-72-1

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Ernesto Hernandez-Perez appeals his 24-month sentence for transporting illegal aliens for financial gain. The district court enhanced the sentence pursuant to U.S.S.G. § 2L1.1(b)(6) after it determined that Hernandez-Perez intentionally or recklessly created a substantial risk of death or serious bodily injury to the aliens he transported. Hernandez-Perez contends that the circumstances of his offense do not warrant the sentence enhancement.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We review a district court's interpretation of the Guidelines de novo and reviews its factual findings for clear error. *See United States v. Solis-Garcia*, 420 F.3d 511, 514 (5th Cir. 2005). It is undisputed that Hernandez-Perez transported fifteen persons in a vehicle rated to carry seven passengers and that thirteen of his passengers lacked safety restraints and were "lying on top of each other" in the vehicle's rear compartment. As the commentary to § 2L1.1 gives "carrying substantially more passengers than the rated capacity of a motor vehicle or vessel" as an example of reckless conduct that would support a sentence enhancement under that Guideline, we perceive no error in Hernandez-Perez's sentence. *See* § 2L1.1, comment. (n.5).

AFFIRMED.