

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

August 17, 2005

Before

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

Hon. DIANE P. WOOD, *Circuit Judge*

Hon. ANN CLAIRE WILLIAMS, *Circuit Judge*

No. 04-3599

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ANDRES BARAJAS-HERNANDEZ,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District
of Illinois

No. 4:04CR40028-001-JPG

J. Phil Gilbert,
Judge.

O R D E R

Andres Barajas-Hernandez pleaded guilty to being present in the United States without authorization after having been deported following a conviction for an aggravated felony, 8 U.S.C. § 1326(b)(2), and was sentenced to 18 months' imprisonment. He filed an appeal challenging his sentence and on June 23, 2005, this court ordered a limited remand so that the district court could inform us whether it would have imposed the same sentence had it known the federal Sentencing Guidelines were not binding. See *United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005).

The district court judge has replied that he would impose the same sentence today knowing that the Guidelines are not mandatory. Therefore, we will affirm the original sentence so long as it was reasonable. See *Paladino*, 401 F.3d at 484.

We invited the parties to file any arguments concerning the appropriate disposition of the appeal in light of the district court's decision. In response, Barajas-

Hernandez has conceded that his sentence of 18 months is reasonable because it falls within the applicable Guidelines range. See *United States v. Mykytiuk*, 2005 WL 1592956 *1 (7th Cir. 2005) (stating that a sentence within the Guidelines is presumptively reasonable). Accordingly, the judgment of the district court is

AFFIRMED.