

SUMMARY AND REQUEST FOR ORAL ARGUMENT

The United States has appealed the district court's decision to depart downward in sentencing Nolberto Lopez-Salas, a defendant who, because of his unique circumstances and his status as a deportable alien, will face a more onerous period of confinement than typical American drug-offenders. The district court believed that Lopez-Salas, a Mexican citizen, would be deprived of the opportunity to reduce his sentence through participation in the Bureau of Prison's residential drug treatment program and would be ineligible for community confinement programs that typically mark the end of a federal sentence.

Lopez-Salas believes that this appeal involves nothing more than a legitimate
exercise of 1996), sentenced

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- I. THE DISTRICT COURT’S DEPARTURE, BASED UPON THE ADVERSE IMPACT THAT LOPEZ-SALAS’ DEPORTABLE ALIEN STATUS WILL HAVE ON HIS SENTENCE UNDER THE UNIQUE CIRCUMSTANCES OF HIS CASE, WASTD 4

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Sentencing Guidelines

U.S.S.G. § 5K2.0 v, 6

U.S.S.G. § 5H1.10

STATEMENT OF THE FACTS

The Statement of Facts set forth in the government's brief contains only the most clinical details of the sentencing in this case. In order to better understand the individual sentenced, and the unique factors which led to the court's downward departure, a more thorough description of Nolberto Lopez-Salas and his circumstances is necessary.

Nolberto Lopez-Salas was born in Mexico in 1959. (PSR p. 2). However, after completing high school and medical training, Lopez-Salas illegally entered the United States. (Id. ¶¶ 51, 54) He later married to Michelle Whitetail, a United States citizen.

as a deportable alien will carry several consequences *during* his incarceration, as well. For example, a deportable alien is assigned a “public safety factor” which automatically places the alien in a low security facility. (Sent. Tr. 7-8) Unless that public

a United States citizen. While a citizen who completes the BOP's residential drug treatment program becomes eligible for up to one year off his sentence, a deportable alien is not similarly eligible for early release. 28 C.F.R. § 550.58. In addition, deportable aliens may have a more difficult time gaining admission to the drug treatment program. A deportable alien is usually assigned to a facility with an institutional hearing program (IHP) once he is within five months of his release, and such

One, he would be eligible for release and put in a halfway house within six months of his release date.

Two, because he has got a drug problem, and if he was willing to enter into a drug treatment program, and he successfully completed it, he would be eligible for a release as early as 18 months prior to his discharge date.

. . . .

But, frankly he doesn't have much chance to get in one.

And if he is sent to an [IHP] institution, two of three don't have the drug treatment program.

Even if it did have the drug treatment program, and he did successfully complete it, he wouldn't have the opportunity for the early release

So

**APPROPRIATE USE OF THE COURT'S DISCRETION
WHICH SHOULD NOT BE DISTURBED ON APPEAL.**

The government spends a good portion of its argument setting out the structure of the Sentencing Reform Act of 1984 and the effect of the United States Sentencing Guidelines on sentences in the federal system. What the government fails to appreciate, however, is that neither Congress nor the Sentencing Commission intended

guidelines.

Not to be deterred, the government alternatively contends that, even in Lopez-Salas' particular case, the court abused its discretion in departing downward. Relying on language in this Court's decisions in

In summary, the district court gave Lopez-Salas no special favors. It merely adjusted Lopez-Salas' sentence to reflect the hardships and lack of opportunity he will likely face during imprisonment as a consequence of his deportable alien status and the unique circumstances of his case. The Supreme Court respects such predictions because of a district court's "vantage point and day-to-day experience in criminal sentencing." Koon, 518 U.S. at 98. This Court should do the same, and affirm the judgment of the district court.

CONCLUSION

For the foregoing reasons, Lopez-Salas respectfully requests that this Court affirm the district court's decision.

NOLBERTO LOPEZ-SALAS, Appellee,

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NOLBERTO LOPEZ-SALAS, Appellee,

NO. 00-3935 NEO

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

UNITED STATES OF AMERICA,
Appellant,

vs.

NOLBERTO LOPEZ-SALAS,
Appellee.

CERTIFICATE OF COMPLIANCE

SHANNON P. O'CONNOR, after being first duly sworn, states:

1. The

