



## TABLE OF CONTENTS

	<u>Page</u>
Summary of the Case . . . . .	i
Table of Authorities . . . . .	iii
Preliminary Statement . . . . .	iv
Statement of the Issue Presented for Review . . . . .	1
Statement of the Case . . . . .	1

## TABLE OF AUTHORITIES

## **PRELIMINARY STATEMENT**

The decision appealed: Defendant Jorge Pesina-Cardenas appeals from

**STATEMENT OF THE ISSUE  
PRESENTED FOR REVIEW**

I.

After granting full reduction for acceptance of responsibility the presentence

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<sup>1</sup> Defendant was sentenced at base offense level 21, with a guidelines range of 77-96 months.



The court: And you were here of your own free will, rather than someone forcing you to come to the United States?

Defendant: Yes.

(Plea Tr. pgs. 7-8).

### **SUMMARY OF THE ARGUMENT**

Defendant sought a downward departure based upon his “cultural assimilation.” The principal basis for the motion was the defendant’s cultural and familial motives for illegally returning to the United States. Defendant respectfully submits the district court erred in denying the departure without giving due consideration to these motives.

### **ARGUMENT**

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738 (1967). Counselirspeats the court to “anything in the peard that arguably supports the appeal. *Id.* at 744.

### **I. consISTRICKT COURT ERRED IN NOT GRANTING Ar OWNWARD**



In *Koon v. United States*, 518 U.S. 81 (1996), the Supreme Court reaffirmed and strengthened the authority of district court judges to exercise discretion in sentencing, stating:

It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as an unique study in the human failings that sometime mitigate, sometimes magnify, the crime and the punishment to ensue. We do not understand it to have been the congressional purpose to withdraw all sentencing discretion from the United States district judge. Discretion is reserved within the Sentencing Guidelines. . . .

In the case at bar defendant sought a sentencing departure based upon his

particular mitigating factor.” *United States v. Correa*, 167 F.3d 414, 417 (8<sup>th</sup>



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## CERTIFICATE OF FILING

I certify that I filed ten copies of this brief and a 3½-inch computer diskette containing the full document to the U.S. Court of Appeals for the Eighth Circuit Clerk's Office, Thomas F. Eagleton Courthouse, Room 24.329, 111 S. 10th Street St. Louis, MO 63102 by sending it via Federal Express on the 17th day of September, 2001. The diskette has been scanned for viruses using Norton Anti Virus Version 5.0, and that scan showed the diskette is virus-free.

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