





**SELYA, Circuit Judge.** This appeal requires us to  
address,

without having obtained the consent of the Attorney General to reapply for admission into the United States, and that, therefore, he had violated 8 U.S.C. § 1326.<sup>1</sup> The appellant pleaded guilty to that charge (which we shall call "illegal reentry").

The principal sentencing guideline applicable to illegal reentry 0.u22 6 Tpl taving been

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<sup>1</sup>With exceptions not relevant here, the statute of conviction provides that any alien who, after having been deported, "enters, attempts to enter, or is at any time found in, the United States" without the Attorney General's express consent to apply for his readmission shall be guilty of a federal crime and punished as provided by law. 8 U.S.C. § 1326(a)(2).

consequences. The court thereupon sentenced the appellant at the bottom of the guideline sentencing range. This appeal ensued.

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legal error without special deference to the sentencing court's views," Snyder

the identified ground for departure – the feature on which the appellant relies to distinguish his case from the mine-run – "potentially, take[s] [the case] outside the Guidelines' 'heartland,'" thus "mak[ing] of it a special, or unusual, case."

Koon

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<sup>2</sup>One court has indicated that a downward departure "may be appropriate where the defendant's status as a deportable alien is likely to cause a fortuitous increase in the severity of his sentence." United States v. Smith, 27 F.3d 649, 655 (D.C. Cir. 1994). But Smith involved a sentence imposed for a drug-trafficking







to certain disadvantages within the federal prison system). It follow

Second, the appellant argues that if the sentencing guidelines do not expressly forbid downward departures based on a particular circumstance, the district court must necessarily be authorized to depart on the basis of that circumstance. Building on this shaky foundation, he posits that because the Sentencing Commission eschewed any mention of the adverse collateral



