

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

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**Appeal No. 01-2447WMS**

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*United States v. Perez,*

## **PRELIMINARY STATEMENT**

The Honorable Dean Whipple, United States Chief District Judge for the



## **STATEMENT OF THE ISSUES**

### **I**

Whether the District Court abused its discretion or committed plain error in

## **STATEMENT OF THE CASE**





in approximately July . . . [1996] by jumping the fence on the border between



The United States believes that his criminal history category of 6 is insufficient to reflect his potential for recidivism and potential commission of crimes in the future, and would request an upward departure.388j5Tj T0 hat ase. of 6







criminal history. Because this is defendant's third time to illegally

## **SUMMARY OF ARGUMENT**

Defendant contends the District Court abused its discretion in departing upward from the United States Sentencing Guidelines in that it did not state any

burden of showing that the District Court's failure affected substantial rights, and

## **ARGUMENT**

### *Main Argument*

Defendant contends the District Court abused its discretion in departing upward from the United States Sentencing Guidelines in that it did not state any specific factual or legal basis for the departure, and did not follow explicitly the methodology set forth in United States Sentencing Guidelines § 4A1.3 (Policy Statement) for making a departure pursuant to that guidelines section. [Appellant's Opening Brief at pp. 10-13] The United States believes the District Court's departure was based on clearly authorized factors (i.e., the facts that Defendant's criminal history category VI "does not adequately represent his true criminal history," and Defendant's "prospects for recidivism are high"), the District Court's findings and reasoning were adequate to explain and support the departure, and the extent of the departure was well within the range of sentences available to the District Court in the exercise of its legitimate sentencing discretion.

It is absolutely clear that the failure of a defendant's criminal history category to reflect adequately the seriousness of the defendant's past criminal conduct and a











**CONCLUSION**

For the foregoing reasons, the United States requests that the Court affirm the District Court's June 5, 2001 judgment in this case.

Respectfully submitted,

Marietta Parker  
United States Attorney

By

Douglas C. Bunch  
Assistant United States Attorney  
Missouri Bar No. 35052  
500 Hammons Tower  
9Tc t. LouhisStreet2

**CERTIFICATE OF SERVICE**

I certify that I, or another person at my direction, mailed two copies of the foregoing on August 6, 2001 to:

Mr. David R. Mercer  
Assistant Federal Public Defender  
801 Hammons Tower  
901 St. Louis Street

## **ADDENDUM**