

TABLE OF CONTENTS

	<u>Page</u>
Table of Contents.....	i
Table of Authorities.....	ii
Argument.....	1
Conclusion.....	4
Certificates of Service & Compliance.....	5

TABLE OF AUTHORITIES

<i>Case</i>	<i>Page</i>
<i>United States v. Nichols</i>	

UMENT

the adequacy of Mr. Garduno-Bustos's criminal history

In sum, the district court was, without doubt, aware of the plain language of § 4A1.3 and that the application of this language was at issue. In this context, the district court had a meaningful opportunity to resolve the above issue currently on appeal. Therefore, this issue should be reviewed under the abuse of discretion standard. In the alternative, this Court should find that the district court committed plain error in failing to follow the explicit methodology of the law, primarily § 4A1.3. *See United States v. Nichols*, **151 F.3d 850, 853 (8th Cir. 1998)** (plain error exists when “(1) the court committed an error; (2) the error is clear under current law; and (3) the error affects [the defendant’s] substantial rights”). Mr. Garduno-Bustos was substantially prejudiced by the district court’s decision to depart upward without specifically stating for the record the basis for this decision.

CONCLUSION

In

CERTIFICATES OF SERVICE & COMPLIANCE
Certificate of Service

The undersigned