

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 99-3092

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United States of America,

Appellee,

v.

Francisco Javier Alvarez-Trevino,  
also known as Fransicso Alvarez-  
Trevinos, also known as Margarito  
Trevino Alvarez, also known as  
Margarito Alvarez,

Appellant.

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Appeal from the United States  
District Court for the  
District of Nebraska.

[UNPUBLISHED]

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Submitted: June 21, 2000

Filed: June 27, 2000

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Before McMILLIAN, LOKEN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

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PER CURIAM.

Francisco Javier Alvarez-Trevino appeals from the final judgment entered in the district court<sup>1</sup> after he pleaded guilty to being unlawfully present in the United States

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<sup>1</sup>The Honorable Thomas M. Shanahan, United States District Judge for the District of Nebraska.

following deportation, in violation of 8 U.S.C. § 1326(a). The district court sentenced Mr. Alvarez-Trevino to fifty-seven months imprisonment and three years supervised release. For reversal, he argues the district court erroneously believed that, because he did not satisfy the departure criteria under U.S. Sentencing Guidelines Manual § 2L1.2, comment. (n.5) (1998), it lacked discretion to depart on the ground that his state felony conviction did not warrant a sixteen-level enhancement under U.S. Sentencing Guidelines Manual § 2L1.2(a) (1998).

Upon careful review of the record, we are convinced that the district court's refusal to depart in this case was an unreviewable exercise of discretion. See United States v. Field, 110 F.3d 587, 591 (8th Cir. 1997).

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.