

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

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No. 01-1001

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United States of America,

Appellee,

v.

Jose Carmen Estrada-Vega,

Appellant.

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\* Appeal from the United States  
\* District Court for the Southern  
\* District of Iowa.

\*                   **[UNPUBLISHED]**

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Submitted: September 7, 2001  
Filed: September 26, 2001

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

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PER CURIAM.

Jose Carmen Estrada-Vega, a Mexican citizen, pleaded guilty to illegal reentry following deportation, in violation of 8 U.S.C. § 1326(a) and (b)(2). After determining his offense level under § 2L1.2 of the Guidelines, the district court<sup>1</sup> sentenced Estrada-Vega to 41 months in prison and two years supervised release. He appeals that sentence. Appellate counsel moved to withdraw under Anders v. California, 386 U.S. 738 (1967), and filed a brief arguing that Estrada-Vega was entitled to a downward

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<sup>1</sup>The HONORABLE CHARLES R. WOLLE, United States District Judge for the Southern District of Iowa.

departure because, as an illegal alien, he would receive disparate treatment from the Bureau of Prisons; because his prior aggravated felony was not serious; and because he is culturally assimilated in the United States.

As the district court assumed that it had authority to depart on the requested grounds as a matter of law, but found no factual basis to depart, the court's discretionary decision is unreviewable. See United States v. Orozco-Rodriguez, 220 F.3d 940, 942 (8th Cir. 2000). In addition, we note "that a defendant's alien status, without more, cannot take his case outside the heartland of cases under section 2L1.2." United States v. Cardoso-Rodriguez, 241 F.3d 613 (8th Cir. 2001).

Our independent review of the record has revealed no other nonfrivolous issues. See Penson v. Ohio, 488 U.S. 75 (1988). Accordingly, we grant counsel's motion to withdraw and affirm.

A true copy.

Attest:

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