

IN THE UNITED STATES COURT OF APPEALS **FILED**
FOR THE FIFTH CIRCUIT

April 6, 2006

Charles R. Fulbruge III
Clerk

No. 05-20044
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-

Appellee,

versus

JESUS LOPEZ-MOYA,

Defendant-

Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CR-382-2

Before BARKSDALE, STEWART and CLEMENT, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Jesus Lopez-Moya (Lopez) moves to withdraw as counsel and has filed a brief as required by *Anders v. California*, 386 U.S. 738 (1967). Our independent review of the record reveals a potentially nonfrivolous sentencing issue involving the use

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

of judge-found facts to enhance a sentence prior to *United States v. Booker*, 543 U.S. 220 (2005).

Lopez completed his term of imprisonment on November 10, 2005, and was deported from the United States. If this court were to order that Lopez be resentenced in light of *Booker*, Lopez would have to appear before the district court. However, it is illegal for Lopez, as someone who has been deported from the United States, to reenter the United States without the permission of the Attorney General of the United States. 8 U.S.C. § 1326(a). Thus, even if we were to decide that Lopez was improperly sentenced under *Booker*, that he may not reenter the United States for resentencing means there is no relief we can grant him.

As there is no relief we can grant Lopez, his appeal is moot. *United States v. Clark*, 193 F.3d 845, 847-48 (5th Cir. 1999). Accordingly, this appeal is DISMISSED as moot.