

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

United States Court of Appeals  
Fifth Circuit

**FILED**

October 15, 2010

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 09-50882

Summary Calendar  
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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE LOPEZ-SOLIS, also known as Jose Luis Lopez,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:07-CR-540-1  
\_\_\_\_\_

Before REAVLEY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Jose Lopez-Solis pleaded guilty to illegal reentry after deportation and was sentenced to 24 months of imprisonment and 3 years of supervised release. This court vacated the sentence and remanded the matter for resentencing. *United States v. Lopez-Solis*, 330 F. App'x 497 (5th Cir. 2009). Lopez-Solis was released from prison on August 21, 2009, and was deported on August 22, 2009. On September 16, 2009, the district court sentenced him in absentia, over defense

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

counsel's objections, to 21 months of imprisonment and 3 years of supervised release.

On appeal, Lopez-Solis's counsel argues that the district court erred in sentencing Lopez-Solis in absentia. The Government concedes that the in-absentia sentencing was error but argues that the appeal is moot because there is no relief that the court is able to grant to Lopez-Solis. Lopez-Solis's counsel seeks to have the erroneous sentence vacated, but such an action necessarily includes a remand for a correct sentencing. We cannot grant what counsel requests because resentencing would require Lopez-Solis to be present at a hearing to consider a new sentence and his deportation bars such an appearance. *See United States v. Rosenbaum-Alanis*, 483 F.3d 381, 383 (5th Cir. 2007). Notwithstanding the conceded error in the in-absentia proceeding, the appeal of Lopez-Solis's sentence is moot.

The appeal is DISMISSED.