

February 21, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-10904
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

WALTER ALBERTO MEJIA-RUIZ

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:04-CR-34-ALL-A

Before KING, WIENER and DeMOSS, Circuit Judges.

PER CURIAM:*

Walter Alberto Mejia-Ruiz (Mejia) appeals his sentence following his guilty plea conviction for illegal reentry. He argues that the district court reversibly erred under United States v. Booker, 543 U.S. 220 (2005), by sentencing him pursuant to a mandatory application of the Sentencing Guidelines. The Government concedes that Mejia has preserved this issue for appeal. The Government, however, has not shown beyond a reasonable doubt that the error was harmless. See United States

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

v. Walters, 418 F.3d 461, 463-64 (5th Cir. 2005). Accordingly, Mejia's sentence is vacated, and this case is remanded for resentencing.

CONVICTION AFFIRMED; SENTENCE VACATED; REMANDED FOR RESENTENCING.