

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20918
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
August 31, 2007

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JOSE DE LEON-HERNANDEZ

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:03-CR-468-2

Before JONES, Chief Judge, and HIGGINBOTHAM and OWEN, Circuit Judges.
PER CURIAM:*

Jose De Leon-Hernandez appeals the sentences imposed following his guilty-plea convictions for harboring undocumented aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(iii), (a)(1)(A)(v)(ii), and (a)(1)(B)(I). He argues that his sentence should be vacated and the case should be remanded for resentencing because it is unclear whether he was sentenced pursuant to an advisory guidelines scheme or a mandatory guidelines scheme in violation of *United States v. Booker*, 543 U.S. 220 (2005).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

De Leon-Hernandez has been released from prison and removed from the United States. Because De Leon-Hernandez is barred from returning to the United States and there is no indication that he has waived his right to be present for resentencing, his challenge to the validity of his sentence is moot. See *United States v. Rosenbaum-Alanis*, [483 F.3d 381, 382-83](#) (5th Cir. 2007).

APPEAL DISMISSED.