

FILED

February 2, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41020

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SIMON MENDEZ-LEYVA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas, Laredo
USDC No. 5:04-CR-358-1

Before REAVLEY, HIGGINBOTHAM and CLEMENT, Circuit Judges.

ON REMAND FROM THE SUPREME COURT

PER CURIAM:*

After Lopez v. Gonzales, 549 U.S. ____ (2006) was decided, the Supreme

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Court vacated the judgment and remanded this case. As we have ordered in United States v. Estrada-Mendoza, No. 05-41627, on January 3, 2007, the enhancement for aggravated felony, for a prior state felony drug conviction where the same conduct would be only a misdemeanor under the federal law, cannot stand.

The conviction is affirmed but the case is remanded for resentencing.

REMANDED