

February 7, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-10027
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NICOLAS SANCHEZ-GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:04-CR-14-ALL)

Before JONES, Chief Judge, WIENER and DeMOSS, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Nicolas Sanchez-Garcia appeals from his sentence following his jury-verdict conviction for illegal reentry into the United States after a previous removal. He contends that the district court erred by sentencing him under the mandatory sentencing regime held unconstitutional in United States v. Booker, 125 S. Ct. 738 (2005). Examination of the record shows that Sanchez-Garcia's contention is correct. The government concedes that Sanchez-Garcia preserved this argument in the district court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

and that it cannot show that the error was harmless beyond a reasonable doubt. Accordingly, we VACATE Sanchez-Garcia's sentence, and the case is REMANDED for resentencing. See United States v. Mares, 402 F.3d 511, 520 n.9 (5th Cir.), cert. denied, 126 S. Ct. 43 (2005). We therefore need not consider Sanchez-Garcia's remaining challenges to his sentence. See United States v. Akpan, 407 F.3d 360, 377 n.62 (5th Cir. 2005).

SENTENCE VACATED; REMANDED FOR RESENTENCING.