

April 18, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-20488  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAVIER FRANCISCO MEDINA-PEREZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(4:04-CR-467-3)  
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Before KING, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Defendant-Appellant Javier Francisco Medina-Perez (Medina) appeals his conviction following his guilty plea to conspiracy to produce false identification documents; production of false identification documents; transfer of false identification documents; fraud and misuse of visas, permits, and other documents; and aiding and abetting the same. Medina argues that the district court violated his Sixth Amendment rights under United States v. Booker, 543 U.S. 220 (2005), when it increased his base offense

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

level by nine levels under U.S.S.G. § 2L1.2(b)(2)(C), because the facts warranting the increase were not found by a jury and not admitted by him. As the Guidelines were only advisory when Medina was sentenced, the Sixth Amendment was not implicated when the district court increased his base offense level. See Booker, 543 U.S. at 245. Medina's alternative argument that the district court clearly erred when it applied § 2L1.2(b)(2)(C) is unavailing. The PSR established that the conspiracy went on for about 40 weeks and that the conspirators produced an average of seven documents a week during the course of the conspiracy, meaning that 280 documents were involved. This, combined with the forensic evidence that 578 names were retrieved from computers, does not support "a definite and firm conviction" that the district court made a mistake when it attributed more than 100 documents to Medina. See United States v. Betancourt, 422 F.3d 240, 248 (5th Cir. 2005); United States v. De Jesus-Batres, 410 F.3d 154, 164 (5th Cir. 2005), cert. denied, 126 S. Ct. 1020 (2006).

AFFIRMED.