

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

**FILED**

March 9, 2006

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No. 05-50320

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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

FERMIN MENDEZ

Defendant - Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
(03-CR-1961)  
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Before JONES, Chief Judge, and WIENER and PRADO, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the unopposed motion filed by Appellee to vacate sentence is GRANTED.

IT IS FURTHER ORDERED that the unopposed motion filed by Appellee to remand case to the district court for resentencing is GRANTED.

In granting the unopposed motion of the United States, this court expresses no opinion on the government's interpretation of

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\*Pursuant to 5<sup>th</sup> Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>th</sup> Cir. R. 47.5.4.

United States v. Hamilton, No. 04-20616, 2006 WL 350066 (5<sup>th</sup> Cir.  
February 16, 2006).