

May 3, 2007

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-20219
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN PEDRO ALVAREZ-BENAVIDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(4:04-CR-346-2)

Before DAVIS, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Juan Pedro Alvarez-Benavidez appeals his sentence following his guilty-plea conviction for conspiracy to possess in excess of five kilograms of cocaine with intent to distribute. He contends the Government breached his plea agreement by failing to recommend an average-participant role in the offense, as it had promised in the agreement. Because Alvarez-Benavidez did *not* raise this issue in the district court, our review is only for plain error. See *United States v. Munoz*, 408 F.3d 222, 226 (5th Cir. 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

The Government concedes it breached the plea agreement; contrary to its promise, it urged the district court to adopt the Presentence Report's upward-adjustment recommendation for an organizer-of-the-offense role. Because the Government breached the agreement, the sentence is vacated and this case is remanded for resentencing before a different district court judge. See **United States v. Saling**, 205 F.3d 764, 768 (5th Cir. 2000).

Alvarez-Benavidez also claims the district court did not provide him an opportunity for allocution at the sentencing hearing. Because he will be resentenced, this issue is moot. See **United States v. Luciano-Rodriguez**, 442 F.3d 320, 323 (5th Cir.), cert. denied, 127 S. Ct. 747 (2006).

CONVICTION AFFIRMED; SENTENCE VACATED; REMANDED FOR RESENTENCING