

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

August 8, 2007

Charles R. Fulbruge III  
Clerk

\_\_\_\_\_  
No. 06-41028  
Conference Calendar  
\_\_\_\_\_

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ZEFERINO ORTEGA-ESPINOZA

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:06-CR-331-1  
\_\_\_\_\_

Before DENNIS, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Zeferino Ortega-Espinoza (Ortega) seeks to preserve for further review his contention that his sentence is unreasonable because this court's post-Booker\*\* rulings have effectively reinstated the mandatory Sentencing Guideline regime condemned in Booker. Ortega concedes that his argument is foreclosed by *United States v. Mares*, 402

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

\*\* *United States v. Booker*, 543 U.S. 220 (2005).

F.3d 511 (5th Cir. 2005), and its progeny, which have outlined this court's methodology for reviewing sentences for reasonableness. In light of *Rita v. United States*, 127 S. Ct. 2456, 2462-68 (2007), the issue remains foreclosed. Ortega also raises arguments that are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998), which held that 8 U.S.C. § 1326(b)(2) is a penalty provision and not a separate criminal offense. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.