

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-40073

Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JUAN MANUEL REYES-CRUZ

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
(B-95-CR-191-1)

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August 19, 1996  
Before KING, GARWOOD, and DENNIS, Circuit Judges.

PER CURIAM:\*

Juan Manuel Reyes-Cruz (Reyes) appeals his conviction on one count of reentering the United States subsequent to deportation without the authorization of the Attorney General, in violation of 8 U.S.C. § 1326(a), (b)(2). Reyes argues that the district court failed to comply with Rule 11 of the Federal Rules of Criminal Procedure because it neglected to explain the nature of

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\*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

the illegal reentry charge to which Reyes purportedly was pleading guilty and because it failed to establish a sufficient factual basis for the illegal reentry charge. We have reviewed the record and have determined that the district court inadvertently read to Reyes a version of the false representation charge that was the subject of count 1 of the indictment (which the government had agreed to dismiss as a part of the plea agreement) and proceeded to elicit a factual basis for that charge. The district court therefore failed to advise Reyes fully of the nature of the illegal reentry charge against him (count 2 of the indictment) and failed to satisfy itself that a factual basis existed to support a conviction on that charge. Further, we have reviewed the record to see whether these failures amounted to harmless error and are unable to conclude that they did. The government concedes error and recommends that the conviction based on Reyes's plea of guilty be vacated.

Reyes's conviction and sentence are VACATED.