

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**  
July 12, 2010

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No. 08-41337  
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Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FRANCISCO DE JESUS RODRIGUEZ,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No.1:08-CR-697-ALL  
\_\_\_\_\_

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before REAVLEY, JOLLY, and WIENER, Circuit Judges.

PER CURIAM:\*

Defendant-Appellant Francisco De Jesus Rodriguez pleaded guilty to being found unlawfully in the United States after deportation following a conviction for an aggravated felony and was sentenced to a 33-month term of imprisonment. Rodriguez appealed his sentence, arguing that (1) the second of his possession convictions should not have been considered an aggravated felony for purposes of U.S.S.G. § 2L1.2(b)(1)(C) because the government failed to prove

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that it was committed after his first possession conviction had become final, and (2) the government failed to prove that his second conviction was secured in compliance with 21 U.S.C. § 851. We affirmed the judgment of the district court. *United States v. Rodriguez*, 348 F. App'x 960, 963 (5th Cir. 2009). After Rodriguez petitioned for a writ of certiorari, the Supreme Court vacated our decision and remanded the case for consideration in light of *Carachuri-Rosendo v. Holder*, \_\_S. Ct. \_\_, 2010 WL 2346552 (June 14, 2010) (No. 09-60). *Rodriguez v. United States*, \_\_S. Ct. \_\_, 2010 WL 85958 (June 21, 2010) (No. 09-8474). In accordance with the Supreme Court's ruling in *Carachuri-Rosendo*, we VACATE the sentence and REMAND for resentencing.