

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

United States Court of Appeals
Fifth Circuit

FILED

July 30, 2010

Lyle W. Cayce
Clerk

No. 09-41203

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RUBEN LUJANO-GONZALEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:09-CR-676-1

Before KING, BENAVIDES, and ELROD, Circuit Judges.

PER CURIAM:*

Ruben Lujano-Gonzalez was convicted of one charge of illegal reentry into the United States and was sentenced to serve 21 months in prison as well as a three-year term of supervised release. This appeal was filed to challenge his sentence, which he argues was improper because it was based on the district court's flawed determination that his prior state convictions for simple possession of marijuana qualified as an aggravated felony for purposes of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

U.S.S.G. § 2L1.2(b)(1)(C). In his opening brief, Lujano-Gonzalez correctly conceded that this argument was foreclosed by our prior caselaw.

However, following the completion of briefing in this case, the Supreme Court released *Carachuri-Rosendo v. Holder*, __ S. Ct. __, 2010 WL 2346552 (June 14, 2010) (No. 09-60), which undermined our prior case law on this topic. Relying on *Carachuri-Rosendo*, Lujano-Gonzalez has filed an unopposed motion to vacate the judgment, remand for resentencing, and issue the mandate forthwith. That motion is GRANTED. The judgment of the district court is VACATED, and this case is REMANDED FOR RESENTENCING. The MANDATE SHALL ISSUE FORTHWITH.