

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

February 27, 2006

Before

Hon. RICHARD A. POSNER, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. ILANA DIAMOND ROVNER, Circuit Judge

UNITED STATES OF AMERICA, Plaintiff-Appellee,	]	Appeal from the United States District Court for the Eastern District of Wisconsin.
No. 04-2386	]	
ABRAHAM SALAZAR-HERNANDEZ, Defendant-Appellant.	]	No. 03 CR 294
	]	Lynn Adelman, Judge.

Abraham Salazar-Hernandez was sentenced to 41 months' imprisonment based on his conviction for illegal re-entry after being deported for an aggravated felony, in violation of 8 U.S.C. § 1326(a) and 1326(b)(2). He argued on appeal that the district court erred by sentencing him under the mandatory sentencing guidelines, *see United States v. Booker*, 543 U.S. 220 (7th Cir. 2005). On the government's motion, we ordered a limited remand under the terms set forth in *United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005), for a determination whether the district court would have imposed the same sentence had it understood that the guidelines were advisory.

The district judge has replied that he would have imposed a different sentence had he known the guidelines were merely advisory. Both parties have responded and agree that the case should be remanded for resentencing. Accordingly,

IT IS ORDERED that Salazar-Hernandez's sentence is **VACATED**, and the case is **REMANDED** to the district court for resentencing.