

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

October 10, 2006

Before

Hon. DIANE P. WOOD, *Circuit Judge*

Hon. TERENCE T. EVANS, *Circuit Judge*

Hon. DIANE S. SYKES, *Circuit Judge*

Nos. 02-2252, 02-2353 & 02-3998

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

FIDELMAR CORTES, JOSE
RODRIGUEZ, and JUAN HERNANDEZ,
Defendants-Appellants.

Appeals from the United States
District Court for the Northern District
of Illinois, Eastern Division

No. 99 CR 469

Robert W. Gettleman,
Judge.

O R D E R

Fidelmar Cortes, Juan Hernandez, and Jose Rodriguez were part of a drug conspiracy. See Unites States v. Medina, 430 F.3d 869 (7th Cir. 2005). Among other things in Medina, we issued a remand pursuant to United States v. Paladino, 401 F.3d 471 (7th Cir. 2005), for the district judge to inform us whether the sentences Cortes, Rodriguez, and Hernandez received would have been different had he known the guidelines were merely advisory. On August 29, 2006, the judge issued the following statement:

The Court has considered the briefs and submissions by the parties with respect to the Paladino remands for defendants Fidelmar Cortez, Jose Rodriguez and Juan Hernandez, and concludes that the sentences might have been less severe had the court known the Sentencing Guidelines were advisory rather than mandatory.

The defendants contend that, based on the judge's statement, they must be resentenced. The government has not objected, perhaps recognizing that United States v. Askew, 417 F.3d 648 (7th Cir. 2005), settles the matter. As it does. In Askew, at 649, we found that a similar statement was an "affirmative answer to our question whether plain error occurred" As in Askew, the statement of the district judge in this case tells us that he suspects, but does not promise, that the sentences of these defendants could be "less severe" under advisory guidelines. Accordingly, the cases of Cortes, Hernandez, and Rodriguez are REMANDED for resentencing.