

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

December 20, 2006

Before

Hon. RICHARD A. POSNER, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

Hon. ANN CLAIRE WILLIAMS, *Circuit Judge*

No. 04-3338

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

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

v.

NOEL SANTIAGO-OCHOA,
Defendant-Appellant.

No. 03 CR 1009-1

Milton I. Shadur,
Judge

ORDER

Noel Santiago-Ochoa pleaded guilty to reentering the United States without permission after being removed to Mexico following conviction for an aggravated felony. *See* 8 U.S.C. § 1326(a). The district court sentenced him to 77 months' imprisonment and three years' supervised release. We subsequently ordered a limited remand under *United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005), so that the district court could tell us whether it would have imposed the same sentence knowing that the sentencing guidelines were only advisory. *See United States v. Booker*, 543 U.S. 220 (2005).

The district court has responded that it would have imposed the same sentence on Santiago-Ochoa post-*Booker*. The parties have not accepted our

invitation to file arguments regarding the appropriate disposition of the appeal in light of the district court's decision. And the sentence falls within the applicable guidelines range, so it is presumptively reasonable under this court's precedent. *See United States v. Mykytiuk*, 415 F.3d 606, 608 (7th Cir. 2005) (holding that sentence within properly calculated guidelines range is presumptively reasonable). *Cf. Rita v. United States*, No. 06-5754, 2006 WL 2307774 (U.S. Nov. 3, 2006) (granting certiorari to decide whether according presumption of reasonableness to sentences within guidelines range is consistent with *Booker*). We therefore AFFIRM the district court's sentence.