

**FILED**

August 16, 2007

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III  
Clerk

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No. 06-41763  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MARISOL BERBER-RAMIREZ

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:06-CR-380-ALL

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Before REAVLEY, SMITH, and STEWART, Circuit Judges.

PER CURIAM:\*

Marisol Berber-Ramirez appeals from her 24-month sentence resulting from her guilty-plea conviction for illegal reentry, in violation of 8 U.S.C. § 1326. Berber-Ramirez argues that the district court misapplied the Sentencing Guidelines by characterizing her state felony conviction for possession of a controlled substance as an "aggravated felony" for purposes of U.S.S.G. 2L1.2(b)(1).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We review Berber-Ramirez's challenge to the district court's application of the Sentencing Guidelines de novo. See *United States v. Villegas*, 404 F.3d 355, 359-61 (5th Cir. 2005). As the Government concedes, Berber-Ramirez's argument has merit in light of the Supreme Court's decision in *Lopez v. Gonzales*, 127 S. Ct. 625 (2006). See *United States v. Estrada-Mendoza*, 475 F.3d 258, 259-61 (5th Cir.), cert. denied, 127 S. Ct. 1845 (2007). Accordingly, Berber-Ramirez's sentence is vacated, and the case is remanded for resentencing in light of Lopez.

SENTENCE VACATED; REMANDED FOR RESENTENCING.