

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 97-50763

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RIGOBERTO ALTAMIRANO-LOPEZ, also  
known as Ernesto Ochoa-Lopez,

Defendant-Appellant.

---

Appeal from the United States District Court  
for the Western District of Texas  
(EP-96-CR-49-ALL)

---

August 31, 1998

Before REAVLEY, DAVIS and DUHÉ, Circuit Judges.

PER CURIAM:\*

The district court's sentence of 70 months is affirmed. The order of this court on the prior appeal "for resentencing consistent herewith" (114 F.3d 48, 50) did not restrict the district court to a sentence without the enhancement. It was to resolve the uncertainty of the state judgment. When this court remands for resentencing, without expressly limiting the district court, it is expected that the court will determine the proper

---

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sentence, hearing additional evidence if necessary. See United States v. Marmolejo, 139 F.3d 528 (5th Cir. 1998) and United States v. Kinder, 980 F.2d 961 (5th cir. 1992).

The district court's order incorrectly assessed \$100 instead of \$50 for the special assessment, a clerical error or inadvertent oversight. The cause is remanded for modification and correction.

JUDGMENT AFFIRMED AS MODIFIED. CAUSE REMANDED FOR CORRECTION.