

**FILED**

May 3, 2007

Charles R. Fulbruge III  
Clerk

*In The United States Court Of Appeals  
For The Fifth Circuit*

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No. 05-40741  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

AQUILEO AYALA-FLORES,

Defendant–Appellant.

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Appeal from the United States District Court  
For the Southern District of Texas  
No. 5:04-CR-2469

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ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:\*

On January 8, 2006, the Supreme Court vacated our judgment in this case and remanded the case to this court for further consideration in light of *Lopez v. Gonzales*.<sup>1</sup> The defendant has served his term of imprisonment and has been deported, but he remains subject

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

<sup>1</sup>127 S. Ct. 625 (2006).

to a term of supervised release. Our disposition of this appeal is governed by this circuit's binding precedent in *United States v. Rosenbaum-Alanis*.<sup>2</sup>

Because the defendant remains subject to a term of supervised release, however, he may still seek modification of the term of supervised release under 18 U.S.C. § 3583(e), which does not require his presence. We therefore DISMISS this appeal without prejudice to the defendant's right to seek a modification of his term of supervised release.

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<sup>2</sup> \_\_\_ F.3d \_\_\_ (5th Cir. 2007).