IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-11297
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO PUENTES, also known
as Bucho, also known as
Mario Alberto Ceballos,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:97-CR-408-14-P

July 27, 2000

Before POLITZ, HIGGINBOTHAM and DeMOSS, Circuit Judges.

PER CURIAM:*

Francisco Puentes appeals his sentence, contending that the district court plainly erred in imposing a minimum mandatory sentence of ten years because it is undisputed that he was involved with only 100 to 400 kilograms of marihuana.

The Government concedes that an error occurred requiring remand. It does

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

not assert Puentes' waiver of the right to appeal as contained in the plea agreement. The Government's motion to file its supplemental brief should be and is GRANTED.

Puentes contends that the sentence imposed should be vacated. The Government suggests that the conviction and sentence should be vacated. We conclude that vacating the sentence and remanding for resentencing corrects the error presented by the parties.[1]

Accordingly, Puentes' sentence is VACATED and the matter is REMANDED to the district court for resentencing based on Puentes' involvement with 100 to 400 kilograms of marihuana.

---

[1]**United States v. Ruiz,** 43 F.3d 985 (5th Cir. 1995).