

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 05-4035**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOSE OSCAR MEJIA-MEJIVAR,

Defendant - Appellant.

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Appeal from the United States District Court for the District of Maryland, at Greenbelt. Roger W. Titus, District Judge. (CR-04-56)

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Submitted: November 30, 2005

Decided: December 29, 2005

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Before NIEMEYER, MICHAEL, and KING, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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James Wyda, Federal Public Defender, Daniel W. Stiller, Assistant Federal Public Defender, Paresh S. Patel, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Greenbelt, Maryland, for Appellant. Rod J. Rosenstein, United States Attorney, Stuart A. Berman, Assistant United States Attorney, Greenbelt, Maryland, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Jose Oscar Mejia-Mejivar pled guilty to illegal reentry of a removed alien after conviction for an aggravated felony, in violation of 8 U.S.C. § 1326 (a), (b)(2) (2000). He appeals his sentence.

Mejia-Mejivar argues on appeal that the district court erred by treating the Sentencing Guidelines as mandatory in violation of United States v. Booker, 125 S. Ct. 738 (2005), and United States v. Hughes, 401 F.3d 540 (4th Cir. 2005), and by announcing an alternate sentence without addressing the factors of 18 U.S.C. § 3553(a) (West 2000 & Supp. 2005). Even assuming, without deciding, that the harmless error standard applies, Mejia-Mejivar cannot establish that any error by the district court in the application of the guidelines as mandatory affected his substantial rights because it had no effect on the district court's selection of Mejia-Mejivar's sentence. The district court noted in sentencing Mejia-Mejivar:

"I have considered carefully the circumstances of this defendant . . . and if the [S]entencing Guidelines did not exist, I would impose the same sentence . . . I do not believe that the sentence that is developed by application of the Sentencing Guidelines is, in any way, materially different than that which I would impose, independent of the Sentencing Guidelines."

Accordingly, we deny Mejia-Mejivar's motion to remand and affirm his conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in

the materials before the court and argument would not aid the decisional process.

AFFIRMED