

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6625

PEDRO DE LOS SANTOS,

Plaintiff - Appellant,

versus

ROBERT E. BRADENHAM, II, U.S. Attorney;
BELINDA BAKER, Law Enforcement; RICHARD D.
DAWES,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. Leonie M. Brinkema, District
Judge. (1:06-cv-00215-LMB-TR)

Submitted: October 31, 2006

Decided: November 13, 2006

Before WILKINSON, NIEMEYER, and KING, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Pedro De Los Santos, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Pedro De Los Santos is serving 144 months in prison for a 1996 distribution of cocaine base conviction. In February 2006, De Los Santos filed a complaint under the Alien Tort Statute,¹ 28 U.S.C. § 1350 (2000), seeking \$2,000,000 in damages on the ground that the arresting officers and the United States Attorney failed to advise him of his rights under Article 36 of the Vienna Convention.² The district court dismissed the action without prejudice, concluding that De Los Santos's action was barred by the holding in Heck v. Humphrey, 512 U.S. 477 (1994), because his criminal conviction has not been set aside and a judgment in this action would necessarily imply the invalidity of that conviction. De Los Santos timely appealed.

After the district court issued its decision and while this appeal was pending, the Supreme Court of the United States decided Sanchez-Llamas v. Oregon, 126 S. Ct. 2669 (2006). The Supreme Court noted that Article 36 addresses a foreign national's entitlement to consular notification concerning his arrest, but does not implicate any right to consular intervention or cessation

¹This statute establishes jurisdiction in the district courts over a civil action by an alien for a tort committed in violation of a treaty of the United States. See generally Sosa v. Alvarez-Machain, 542 U.S. 692 (2004).

²The Vienna Convention on Consular Relations, Apr. 24, 1963, art. 36, 21 U.S.T. 77, 101, requires an arresting government to inform a foreign national who has been arrested of his right to contact his consul.

of the criminal investigation and that violation of any rights under Article 36 would not trigger application of the exclusionary rule. Id. at 2681. In light of Sanchez-Llamas, we find that the district court erred by finding De Los Santos's action to be Heck-barred.³

Accordingly, we vacate the district court's order dismissing De Los Santos's action without prejudice pursuant to Heck and remand for further proceedings consistent with this opinion. 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.

VACATED AND REMANDED

³We express no opinion concerning whether Article 36 creates a private right of action.