

JAN 24 2008

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>HECTOR MENDEZ-NAVARRO,</p> <p>Defendant - Appellant.</p>
---

No. 06-50651

D.C. No. CR-06-00733-GT

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Gordon Thompson, Senior District Judge, Presiding

Submitted January 14, 2008\*\*

Before: HALL, O’SCANNLAIN, and PAEZ, Circuit Judges.

Hector Mendez-Navarro appeals from the 120-month sentence imposed following his guilty-plea conviction for importation of marijuana, in violation of

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

21 U.S.C. §§ 952, 960. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate the sentence and remand.

Mendez-Navarro contends that the district court erred when it determined that the application of the safety valve provision, pursuant to 18 U.S.C. § 3553(f), was discretionary, and by failing to articulate sufficient reasons for denying safety valve relief. Because the district court's safety valve determination was based, at least in part, on a misapprehension of the continuing mandatory nature of 18 U.S.C. § 3553(f) following the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), we remand for resentencing. *See United States v. Mejia-Pimental*, 477 F.3d 1100, 1109 (9th Cir. 2007). Because we remand, we need not reach the parties' additional contentions regarding whether Mendez-Navarro was eligible for safety valve relief.

**VACATED and REMANDED for RESENTENCING.**