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## USA v. Gonzalez

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 03-1674

UNITED STATES OF AMERICA

v.

ANGEL GONZALEZ

(EDPA No. 02-cr-00534)

PRESENT: SLOVITER, FUENTES, and BECKER, Circuit Judges

ORDER

On May 25, 2004, this Court issued its opinion and judgment in the above captioned case. On June 22, 2004, appellant Angel Gonzalez filed a petition for rehearing en banc which was denied by order entered July 7, 2004.

On July 8, 2004, Appellant filed a Motion to Amend Appellant's Motion for Leave to File Supplemental Petition for Rehearing in Light of the Supreme Court's Decision in Blakely v. Washington 542 U.S. 296 (2004) which the Court has construed as a Motion to Reopen the Appeal in Light of Supreme Court's Decision in Blakely;

On August 5, 2004, the Court issued an order holding c.a.v. all motions relating to the Supreme Court's decision in Blakely;

On July 8, 2005, the Court directed the parties to file written comment as to the applicability of the Supreme Court's decision in United States v. Booker, 125 S. Ct. 738 (2005) to the present case.

Upon review of the parties' comments, and particularly the government's concession "that under the precedent of this Court, set forth in United States v. Davis, 407 F.3d 162 (3d Cir. 2005), this case should be remanded for resentencing, allowing the district court to consider the application of Booker in the first instance," it is hereby O R D E R E D that the Motion to Reopen the Appeal is granted. The Court's opinion and judgment entered May 25, 2004 are amended in accordance with this Court's procedures set forth in United States v. Davis, 407 F.3d 162 (3d Cir. 2005).

By the Court,

/s/ Dolores K. Sloviter

Circuit Judge

Date: November 16, 2005

CLC\cc: Robert Epstein, Esq. David L. McColgin, Esq. Roberta Benjamin, Esq.