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2008 Decisions

Opinions of the United  
States Court of Appeals  
for the Third Circuit

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1-15-2008

## USA v. Aldea

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NOT PRECEDENTIAL

IN THE UNITED STATES COURT  
OF APPEALS  
FOR THE THIRD CIRCUIT

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NO. 06-4413

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UNITED STATES OF AMERICA

v.

JORGE ALDEA  
also known as  
FAT GEORGE

Jorge Aldea  
Appellant

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On Appeal From the United States  
District Court  
For the Eastern District of Pennsylvania  
(D.C. Crim. Action No. 03-cr-00014-2)  
District Judge: Hon. Stewart Dalzell

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
January 11, 2008

BEFORE: FISHER, HARDIMAN and  
STAPLETON, *Circuit Judges*

(Opinion Filed January 15, 2008 )

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OPINION OF THE COURT

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STAPLETON, Circuit Judge:

Appellant Jorge Aldea was convicted by a jury of conspiracy to distribute in excess of five kilograms of cocaine. The District Court found that he conspired to distribute over 150 kilograms of cocaine and sentenced Aldea pursuant to the then mandatory Sentencing Guidelines to 280 months of incarceration. On appeal, with *Blakely* and *Booker* having been decided in the interim, we affirmed Aldea's conviction but remanded for resentencing. We ruled as follows:

Jorge Aldea argues that his sentence of 280 months exceeded the maximum possible sentence supported by the jury verdict and, thus, violates *Blakely v. Washington*, 542 U.S. 296 (2004), and *United States v. Booker*, 543 U.S. 220 (2005). He also argues that, because he committed his offense before the Supreme Court decided *Booker*, the Ex Post Facto clause prevents imposition of a sentence that includes any enhancement. Having determined that *Booker* issues are best resolved by the District Court in the first instance, we will vacate his sentence and remand for resentencing in accordance with that opinion. (Citations omitted.)

*United States v. Jorge Aldea*, No. 04-2305, Slip Opinion at 14-15 (Not Precedential).

On remand, the District Court rejected Aldea's argument that imposition of a sentence greater than 151 months of incarceration would be unlawful and sentenced him to 240 months. This appeal followed.

Aldea insists that the District Court's 240 month sentence violated his Due Process right to protection from an *ex post facto* increase in punishment. Aldea candidly acknowledges, however, that we have held to the contrary in *United States v. Pennavaria*, 445 F.3d 720 (3d Cir. 2006), and explains that he is pursuing this appeal in order to be in a position to seek review in the Supreme Court of the United States.

Accordingly, the judgment of the District Court will be affirmed.