

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 06a0406n.06

Filed: June 14, 2006

Case No. 04-6399

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

| | | |
|---------------------------|---|------------------------------------|
| UNITED STATES OF AMERICA. |) | |
| |) | |
| Plaintiff-Appellee, |) | ON APPEAL FROM THE UNITED |
| |) | STATES DISTRICT COURT FOR |
| v. |) | THE WESTERN DISTRICT OF |
| |) | TENNESSEE, EASTERN DIVISION |
| |) | |
| GILBERTO RAMIREZ-CHAVEZ, |) | |
| |) | |
| Defendant-Appellant.) |) | |

BEFORE: RYAN and COLE, Circuit Judges; and SARGUS, District Judge.*

SARGUS, District Judge. Appellant Gilberto Ramirez-Chavez contends, and the government does not dispute, that he was sentenced prior to the decision in *United States v. Booker*, 543 U.S. 220 (2005), in violation of the Sixth Amendment. The parties agree that a remand is appropriate for resentencing under *Booker*.

The sentence is VACATED and this case is remanded for resentencing in light of *Booker*.¹

*The Honorable Edmund A. Sargus, Jr., United States District Judge for the Southern District of Ohio, sitting by designation.

¹Appellant's counsel stated during a telephonic oral argument that Ramirez-Chavez was withdrawing his first assignment of error which challenged a sixteen-level enhancement under U.S.S.G. §

2L1.2(b)(1)(A). Consequently, the Court does not address this issue.