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Citation: **2005 U.S. App. LEXIS 1918**

*2005 U.S. App. LEXIS 1918, \**

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JASON ANTHONY REYNOLDS, Defendant  
- Appellant.

No. 03-50199

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

2005 U.S. App. LEXIS 1918

June 9, 2004, Argued; February 1, 2005, Resubmitted, Pasadena, California  
February 7, 2005, Filed

**NOTICE: [\*1]** RULES OF THE NINTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

**PRIOR HISTORY:** Appeal from the United States District Court for the Southern District of California. D.C. No. CR-02-02856-JNK. Judith N. Keep, District Judge, Presiding.

**DISPOSITION:** Defendant's sentence VACATED and case REMANDED.

**CORE TERMS:** sentence, guideline, smuggling, cross-reference, importing, iodine

**COUNSEL:** For UNITED STATES OF AMERICA, Plaintiff - Appellee: Roger W. Haines, Jr., AUSA, Mark R. Rehe, Esq., USSD - OFFICE OF THE U.S. ATTORNEY, San Diego, CA.

For JASON ANTHONY REYNOLDS, Defendant - Appellant: Vincent J. Brunkow, Ramzi G. Nasser, Esq., FSDS - FEDERAL DEFENDERS OF SAN DIEGO, INC., San Diego, CA.

**JUDGES:** Before: D.W. NELSON, GIBSON, \*\* and GRABER, Circuit Judges.

\*\* The Honorable John R. Gibson, Senior Circuit Judge for the United States Court of Appeals for the Eighth Circuit, sitting by designation.

**OPINION:** MEMORANDUM \*

----- Footnotes -----

\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by [Ninth Circuit Rule 36-3](#).

----- End Footnotes----- **[\*2]**

Defendant Jason Anthony Reynolds pleaded guilty to importing 53.35 kilograms of iodine without unloading it for inspection by a customs officer, in violation of [18 U.S.C. § 545](#). He appeals his sentence, contending that the district court improperly applied a cross-reference that requires use of an offense guideline other than that applicable to "Evading Import Duties or Restrictions (Smuggling)," [United States Sentencing Guidelines § 2T3.1](#) (2002) (U.S.S.G.),

if the smuggling "offense involves a contraband item covered by another offense guideline." [U.S.S.G. § 2T3.1\(c\)\(1\)](#). The district court found that Defendant had reason to believe that the iodine he imported would be used to make a controlled substance and therefore applied the cross-reference and sentenced Defendant under [U.S.S.G. § 2D1.11](#) ("Unlawfully . . . Importing . . . a Listed Chemical").

Because Defendant's 30-month sentence was imposed under the system of mandatory Guidelines, the enhancement of his sentence based on facts found only by the judge violated the [Sixth Amendment](#). [United States v. Booker, 160 L. Ed. 2d 621, 125 S. Ct. 738, 755-56 \(2005\)](#). Therefore, we VACATE Defendant's sentence [**\*3**] and REMAND the case for resentencing in a manner consistent with [Booker](#).

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