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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p>v.</p> <p>ERNESTO HURTADO-ZEPEDA, aka, Gabriel Hurtado-Zepeda,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 08-50013

D.C. No. CR-07-00746-PSG-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Ernesto Hurtado-Zepeda appeals from the 77-month sentence imposed following his guilty-plea conviction for being an illegal alien found in the United

* 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).

States following deportation, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Hurtado-Zepeda contends that his sentence is unreasonable in light of the factors set forth in 18 U.S.C. § 3553(a). We conclude that the district court did not commit procedural error and that the sentence is substantively reasonable. *See United States v. Stoterau*, 524 F.3d 988, 1001-02 (9th Cir. 2008); *see also United States v. Marcial-Santiago*, 447 F.3d 715, 718-19 (9th Cir. 2006); *United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 770-71 (9th Cir. 2006).

Hurtado-Zepeda also contends that a condition of supervised release that requires him to report to the probation office within 72 hours of re-entering the United States violates his Fifth Amendment privilege against self-incrimination. As Hurtado-Zepeda acknowledges, this contention is foreclosed. *See Rodriguez-Rodriguez*, 441 F.3d at 772-73.

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to 8 U.S.C. § 1326(b)(2).

See United States v. Herrera-Blanco, 232 F.3d 715, 719 (9th Cir. 2000)

(remanding sua sponte to delete the reference to § 1326(b)(2)).

AFFIRMED; REMANDED to correct the judgment.