

MAR 24 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PEDRO CRUZ-TERCERO,

Defendant - Appellant.

No. 08-50294

D.C. No. 3:07-cr-03021-WQH-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
William Q. Hayes, District Judge, Presiding

Submitted March 18, 2009\*\*

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Pedro Cruz-Tercero appeals from the 80-month sentence imposed following his bench-trial conviction for being a deported alien found in the United States, in

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\* 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).

violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

We affirm, but remand to correct the judgment.

Cruz-Tercero contends that the district court procedurally erred at sentencing by failing to consider the need to avoid unwarranted sentence disparities under 18 U.S.C. § 3553(a)(6), and that the resulting sentence is unreasonable. We conclude that the district court did not procedurally err, and that the sentence is reasonable. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

Cruz-Tercero's contention that the district court sought to punish him at sentencing for exercising his right to stand trial is unsupported by the record.

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). *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.**