

MAY 21 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NOT FOR PUBLICATION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.

JOSE CAMACHO-JIMENEZ,

Defendant - Appellant.

No. 08-50381

D.C. No. 3:08-cr-00265-JAH

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
John A. Houston, District Judge, Presiding

Submitted May 12, 2009\*\*

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

Jose Camacho-Jimenez appeals from the 77-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United

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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).

States, in 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.

Camacho-Jimenez contends the district court procedurally erred at sentencing by failing to consider all of the factors set forth in 18 U.S.C. § 3553(a), failing to make an individualized determination based on the facts, and placing undue weight on his criminal history. Camacho-Jimenez contends that the resulting sentence is substantively unreasonable. We conclude that the district court did not procedurally err and that the bottom-of-the-Guidelines range sentence is substantively reasonable. *See Gall v. United States*, 128 S. Ct. 586, 600-02 (2007); *United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc); *see also United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 770-71 (9th Cir. 2006).

As Camacho-Jimenez concedes, his contention that the statutory maximum under 8 U.S.C. § 1326 is two years of imprisonment and one year of supervised release is foreclosed. *See United States v. Covian-Sandoval*, 462 F.3d 1090, 1096-97 (9th Cir. 2006).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062-63 (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.**