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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARTIN OROSCO-IBARRA,

Defendant - Appellant.

No. 08-50331

D.C. No. 3:08-cr-01261-LAB-1

MEMORANDUM\*

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

Submitted June 16, 2009\*\*

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Martin Orosco-Ibarra appeals from the \$100 fine imposed as part of his sentence following his guilty-plea conviction for illegal entry, in violation of 8 U.S.C. § 1325. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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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).

Orosco-Ibarra contends that the district court erred at sentencing by imposing a fine without considering the factors set forth in U.S.S.G. § 5E1.2 and 18 U.S.C. §§ 3553(a) and 3572(a). He also contends that the \$100 fine is unreasonable because he established that he does not have either the present or future ability to pay a fine. We conclude that the district court's finding that Orosco-Ibarra will be able to pay the fine is not clearly erroneous, *see United States v. Haggard*, 41 F.3d 1320, 1329 (9th Cir. 1994), and that the fine is procedurally and substantively reasonable, *see United States v. Orlando*, 553 F.3d 1235, 1239-40 (9th Cir. 2009).

Because we affirm Orosco-Ibarra's sentence, we need not address the government's contention that the appeal waiver in Orosco-Ibarra's plea agreement bars this appeal. *See United States v. Jacobo Castillo*, 496 F.3d 947, 957 (9th Cir. 2007) (en banc).

**AFFIRMED.**