

AUG 17 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NOT FOR PUBLICATION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.

ANGEL VILLEGAS-TIRADO,

Defendant - Appellant.

No. 08-50309

D.C. No. 3:08-cr-00364-JAH

MEMORANDUM\*

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

Submitted August 11, 2009\*\*

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

Angel Villegas-Tirado appeals from the 57-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(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm, but remand to correct the judgment.

Villegas-Tirado contends that the sentence is unreasonable in light of his motivation for re-entering and the need to avoid unwarranted sentencing disparities. The record reflects that the district court properly considered the § 3553(a) factors, and that, in light of the totality of the circumstances, the sentence is substantively reasonable. *See United States v. Crowe*, 563 F.3d 969, 978 (9th Cir. 2009); *see also United States v. Autery*, 555 F.3d 864, 873-78 (9th Cir. 2009).

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. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000); *see also 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.**