

AUG 31 2009

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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NOT FOR PUBLICATION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>Plaintiff - Appellee,</p> <p>v.</p> <p>JOSE PINEDA-GALLEGOS,</p> <p>Defendant - Appellant.</p>
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No. 08-30437

D.C. No. 9:08-CR-00033-DWM-1

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Donald W. Molloy, District Judge, Presiding

Submitted August 20, 2009\*\*

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Jose Pineda-Gallegos appeals the sentence imposed following his guilty plea to illegal reentry after deportation in violation of 8 U.S.C. § 1326(a). Pineda-

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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).

Gallegos contends that the district court erred by failing to consider that the lack of a "fast-track" program in the District of Montana creates an unwarranted sentencing disparity contrary to the requirements of 18 U.S.C. § 3553(a)(6).

Pineda-Gallegos acknowledges that his contention is foreclosed by *United States v. Gonzalez-Zotelo*, 556 F.3d 736, 740-41 (9th Cir. 2009), and that he raises it to preserve it for potential future review.

**AFFIRMED.**