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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>ROBERTO OLIVER-GUZMAN,</p> <p>Defendant - Appellant.</p> |
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No. 09-50669

D.C. No. 3:09-cr-00866-JAH

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

Roberto Oliver-Guzman appeals from the 65-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. §1326. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Oliver-Guzman contends that the district court procedurally erred when it did not consider his policy arguments against the 16-level enhancement under U.S.S.G. § 2L1.2. The record indicates that the district court mistakenly believed that it did not have the authority to reject the 16-level enhancement on policy grounds. *See Spears v. United States*, 129 S.Ct. 840, 843-44 (2009) (per curiam); *United States v. Williams*, 624 F.3d 1023, 1028 (9th Cir. 2010) (“[D]istrict judges are at liberty to reject *any* Guideline on policy grounds”). We vacate and remand for resentencing. *See Moore v. United States*, 129 S.Ct. 4, 5 (2008) (per curiam).

VACATED and REMANDED.