

JUL 31 2008

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NOT FOR PUBLICATION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 GUADALUPE GUTIERREZ-
ROMERO,

Defendant - Appellant.

No. 07-50318

D.C. No. CR-06-02256-TJW

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted July 22, 2008**

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Jose Guadalupe Gutierrez-Romero appeals from the 51-month sentence imposed following his guilty-plea conviction for being a deported alien found in

* 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).

the United States, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate and remand.

Gutierrez-Romero contends that his sentence is unreasonable because the district court failed to address his argument that he has suffered abuse and will face abuse in prison due to his transgender status. We conclude that the district court should more adequately explain the sentencing factors listed in 18 U.S.C. § 3553(a), and address how Gutierrez-Romero's transgender status is weighed in those factors. *Cf. United States v. Carty*, 520 F.3d 984, 991-96 (9th Cir. 2008) (en banc).

Additionally, the district court should strike the reference to § 1326(b) from the judgement. *See United States v. Maciel-Vasquez*, 458 F.3d 994, 997 (9th Cir. 2006).

VACATED and REMANDED.