

JAN 28 2008

CATHY A. CATTERSON, 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NOT FOR PUBLICATION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.

VICTOR MANUEL ROMAN-  
BARBOZA,

Defendant - Appellant.

No. 07-50044

D.C. No. CR-06-00534-BEN-1

MEMORANDUM \*

Appeal from the United States District Court  
for the Southern District of California  
Roger T. Benitez, District Judge, Presiding

Submitted January 14, 2008\*\*

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Victor Manuel Roman-Barboza appeals from the judgment following his conditional guilty plea to bringing in an illegal alien for financial gain and aiding

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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).

and abetting, in violation of 8 U.S.C. § 1324(a)(2)(B)(ii), and 18 U.S.C. § 2. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate and remand.

At the time that Roman-Barboza was charged and convicted of the “bringing to” offense, the applicable rule of law was the “immediate destination” test which was subsequently overruled by *United States v. Lopez*, 484 F.3d 1186 (9th Cir. 2007) (en banc). Because an appellant is entitled to the benefit of the law prevailing at the time of his appeal, *see United States v. Uchimura*, 125 F.3d 1282, 1286 (9th Cir. 1997), we vacate the conviction and remand for further proceedings in light of *Lopez*.

**VACATED and REMANDED.**