

FILED

MAR 06 2008

MOLLY DWYER, ACTING 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NOT FOR PUBLICATION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.

SAM JOSEPH RICO,

Defendant - Appellant.

No. 06-10747

D.C. No. CR-04-01565-JMR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
John M. Roll, District Judge, Presiding

Submitted February 26, 2008**

Before: BEEZER, FERNANDEZ and McKEOWN, Circuit Judges.

Sam Joseph Rico appeals from the 48-month sentence imposed upon remand, following his jury-trial conviction for two counts of transportation of

* 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).

illegal aliens, in violation of 8 U.S.C. §§ 1342(a)(1)(ii) and (B)(ii). We have jurisdiction pursuant to 28 U.S.C. § 1291.

Rico contends that the district court erred by enhancing his sentence for intentionally and recklessly creating a substantial risk of death or serious bodily injury to the aliens he was transporting. We conclude that the district court did not err by applying the enhancement, especially in light of Rico's conduct after he was pulled over. *See United States v. Miguel*, 368 F.3d 1150, 1155 (9th Cir. 2004); U.S.S.G. § 2L1.1(b)(5) (2005); *cf. United States v. Torres-Flores*, 502 F.3d 885, 890-91 (9th Cir. 2007). Accordingly, the sentence is affirmed.

AFFIRMED.