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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WALDO ORTEGA-MENDOZA, aka  
Jorge Antunes-Ortega; et al.,

Defendant - Appellant.

No. 06-50372

D.C. No. CR-03-00795-GT

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Gordon Thompson, District Judge, Presiding

Submitted June 18, 2008\*\*

Before: REINHARDT, LEAVY, and W. FLETCHER, Circuit Judges.

Waldo Ortega-Mendoza appeals from the 24-month sentence imposed upon revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand for re-sentencing.

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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).

Ortega-Mendoza contends that the district court relied on impermissible factors in sentencing him. He also contends that his sentence is unreasonable. In light of our recent decision in *United States v Simtob*, 485 F.3d 1058, 1063-64 (9th Cir. 2007), it is unclear whether or not the district court relied on impermissible factors in sentencing Ortega-Mendoza. *See also United States v. Miqbel*, 444 F.3d 1173, 1181-82 (9th Cir. 2006). Moreover, the district court did not otherwise explain its sentence, or, at minimum, explain why it rejected Ortega-Mendoza's arguments in support of a lower sentence. *See United States v. Carty*, 520 F.3d 984, 991-92 (9th Cir. 2008) (en banc). We therefore conclude that the district court procedurally erred in sentencing Ortega. *Id.*

**VACATED AND REMANDED.**