

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 09 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MELQUIADES SIMON-HERNANDEZ,

Defendant - Appellant.

No. 08-30046

D.C. No. CR-06-00407-MFM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Malcolm F. Marsh, District Judge, Presiding

Submitted June 18, 2008\*\*

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

Melquiades Simon-Hernandez appeals from the 27-month sentence imposed following his guilty-plea conviction for illegally reentering the United States

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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).

following deportation, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Simon-Hernandez contends that the district court procedurally erred by: (1) failing to provide an adequate explanation for the sentence imposed; (2) failing to address his mitigation arguments; and (3) erroneously considering certain defendants in discounting his cultural assimilation argument. We conclude that the district court did not procedurally err. *See Gall v. United States*, 128 S. Ct. 586, 597-98 (2007).

Simon-Hernandez also contends that his sentence is substantively unreasonable because there is an unwarranted disparity between the sentence he received and the sentences imposed upon defendants sentenced under the fast-track program. The disparity is not unwarranted. *See United States v. Marcial-Santiago*, 447 F.3d 715, 719 (9th Cir. 2006). Thus, Simon-Hernandez's sentence is not substantively unreasonable. *See Gall*, 128 S. Ct. at 597.

**AFFIRMED.**