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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NOT FOR PUBLICATION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.

JOSE ALFREDO ROMERO-SANCHEZ,

Defendant - Appellant.

No. 07-10070

D.C. No. CR-06-00130-JAT

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James A. Teilborg, District Judge, Presiding

Submitted February 26, 2008**

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Jose Alfredo Romero-Sanchez appeals from his conviction and sentence for illegal reentry after deportation, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We reverse.

* 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).

Romero-Sanchez contends that the district court erred by denying his motion to dismiss the indictment, because the entry of the underlying deportation order was fundamentally unfair. To sustain a collateral attack on a deportation order in a subsequent criminal proceeding, a defendant must demonstrate that his due process rights were violated by defects in the underlying deportation proceeding, and that he suffered prejudice as a result. *See* 8 U.S.C. § 1326(d); *United States v. Ubaldo-Figueroa*, 364 F.3d 1042, 1047-48 (9th Cir. 2004). To establish prejudice, a defendant must only show that he had a plausible ground for relief from deportation. *See id.* at 1050.

The district court found that the deportation proceedings did not violate Romero-Sanchez's due process rights. However, we conclude that Romero-Sanchez suffered a due process violation when the Immigration Judge ruled that he was not eligible for relief from deportation at the time of the deportation proceedings in April, 1997. *See United States v. Leon-Paz*, 340 F.3d 1003, 1006-07 (9th Cir. 2003); *see also INS v. St. Cyr*, 533 U.S. 289, 326 (2001) (holding that § 212(c) relief remained available for aliens who pleaded guilty at a time when their plea would not have rendered them ineligible for such relief).

The district court properly found that Romero-Sanchez did have a plausible ground for relief, and could therefore establish prejudice. *See Ubaldo-Figueroa*, 364 F.3d at 1050. We conclude that entry of the underlying deportation order was

invalid, and cannot be used as an element of Romero-Sanchez's conviction under 8 U.S.C. § 1326. *See* 8 U.S.C. § 1326(d); *Ubaldo-Figueroa*, 364 F.3d at 1051. We therefore reverse the conviction under 8 U.S.C. § 1326. *See Ubaldo-Figueroa*, 364 F.3d at 1051.

REVERSED.