

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NOT FOR PUBLICATION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.

ELISA LUGO,

Defendant - Appellant.

No. 06-50720

D.C. No. CR-03-00109-R-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted January 14, 2008**

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

Elisa Lugo appeals from the 97-month sentence imposed upon remand following her guilty plea conviction for conspiracy, false statement to financial

* 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).

institution and unlawful use of means of identification, in violation of 18 U.S.C. §§ 2(b), 371, 1014, and 1028(a)(7). We have jurisdiction pursuant to 28 U.S.C. § 1291, and vacate and remand.

Lugo contends that there was insufficient evidence in the record to support the district court's application of a two-level vulnerable victim enhancement pursuant to U.S.S.G. § 3A1.1(b)(1). We agree, and conclude that the evidence does not indicate that Lugo specifically targeted the non-English speakers. *See United States v. Castellanos*, 81 F.3d 108, 110 (9th Cir. 1996); *see also* U.S.S.G § 3A1.1, cmt. n.2 (2002).

Because the district court did not make an explicit Guidelines calculation, the record is unclear as to which enhancements it ultimately applied. As such, we cannot review Lugo's contention that the application of the vulnerable victim enhancement is precluded by the application notes of U.S.S.G. § 2B1.1(b)(2)(B). Thus, we conclude that the district court failed to provide an adequate explanation of reasons for the sentence. *See Rita v. United States*, 127 S. Ct. 2456, 2468-69 (2007); *see also Gall v. United States*, 128 S. Ct. 586, 596-98 (2007) (failure to calculate the Guidelines and failure to adequately explain the chosen sentence is procedural error). Accordingly, we vacate and remand for further proceedings.

VACATED AND REMANDED.