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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>FRANCISCO MARQUEZ, JR.,</p> <p>Defendant - Appellant.</p>

No. 07-50355

D.C. No. CR-06-00732-GT

MEMORANDUM*

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

Submitted March 10, 2008**

Before: T.G. NELSON, TASHIMA and BYBEE, Circuit Judges.

This case was previously before this court after appellant's initial sentencing in September 2006, case number 06-50544. In that appeal, the government filed a motion for summary reversal and remand for resentencing because the district court failed to provide notice of its intent to sentence appellant outside the range

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

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suggested by the Sentencing Guidelines as required by Federal Rule of Criminal Procedure 32(h). *See United States v. Evans-Martinez*, 448 F.3d 1163 (9th Cir. 2006). On May 14, 2007, this court granted the government's motion, vacated the sentence and remanded proceedings.

On remand, the district judge failed to calculate the Sentencing Guidelines range before concluding that a sentence outside the range was appropriate. The government has again moved for summary reversal and remand for the district court to resentence appellant by first calculating the Sentencing Guidelines range before departing or adjusting from the base offense level. *See Gall v. United States*, 128 S. Ct. 586 (2007). Appellant does not oppose the motion.

A review of the record supports the government's motion, and the motion for summary reversal and remand is granted.

VACATED AND REMANDED.