

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 03 2008

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ANGEL RAMIREZ-ESTRADA,

Defendant - Appellant.

No. 06-50473

D.C. No. CR-06-00121-DMS

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Dana M. Sabraw, District Judge, Presiding

Submitted June 18, 2008\*\*

Before: THOMAS, W. FLETCHER and CLIFTON, Circuit Judges.

Jose Angel Ramirez-Estrada appeals from the 33-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United

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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).

States, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate and remand.

Ramirez-Estrada contends that the district court erred in determining that his Utah state convictions for possession of a controlled substance qualify as aggravated felony convictions for sentencing enhancement purposes. Subsequent to Ramirez-Estrada's sentencing, the Supreme Court decided *Lopez v. Gonzales*, 127 S. Ct. 625, 633 (2006), in which holds that "a state offense constitutes a 'felony punishable under the Controlled Substances Act' only if it proscribes conduct punishable as a felony under that federal law." Because the district court did not have the benefit of the Supreme Court's decision in *Lopez* at the time that it sentenced Ramirez-Estrada, we vacate the sentence and remand for resentencing. *See United States v. Figueroa-Ocampo*, 494 F.3d. 1211, 1217 (9th Cir. 2007) (vacating and remanding in light of *Lopez*).

We express no opinion on the issue whether the 8-level enhancement is appropriate because Ramirez-Estrada's possession offenses qualify as "recidivist possession" under the Controlled Substances Act. *See Lopez*, 127 S. Ct. at 630 n.6.

**VACATED and REMANDED.**