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OCT 01 2007

**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NOT FOR PUBLICATION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.

JOSE ALBERTO TORRES,

Defendant - Appellant.

No. 06-30413

D.C. No. CR-04-00126-EJL

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted September 24, 2007**

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

Jose Alberto Torres appeals from the district court's order upon limited remand pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc), concluding that it would not have imposed a materially different sentence

* 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).

had it known that the Sentencing Guidelines were advisory. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Torres contends that the 70-month sentence he received for unlawful entry following deportation, in violation of 8 U.S.C. § 1326, is unreasonable in light of 18 U.S.C. § 3553(a). Because the record establishes that the district court understood its authority on remand to apply a non-Guidelines sentence, the district court's determination is reasonable. *See United States v. Combs*, 470 F.3d 1294, 1296-97 (9th Cir. 2006).

AFFIRMED.