

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 06 2015

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ESCOBAR-ESCOBAR, AKA Jesus
Escobar-Escobar, AKA Jesus Escobar-
Hernandez,

Defendant - Appellant.

No. 14-50021

D.C. No. 3:13-cr-03794-LAB-1

MEMORANDUM*

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

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted March 2, 2015**
Pasadena California

Before: PREGERSON, FERNANDEZ, and NGUYEN, Circuit Judges.

Jose Escobar-Escobar appeals the sentence imposed by the district court following a conviction for a violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291. We vacate the sentence and remand for resentencing.

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

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

In imposing a high-end sentence of 16 months, the district court stated that “as part of [his] thinking in this case,” he considered the costs to the taxpayers in providing Escobar with legal representation, court process, and incarceration. A district court, however, may not consider cost as a sentencing factor. *See United States v. Tapia-Romero*, 523 F.3d 1125, 1127 (9th Cir. 2008) (stating that § 3553(a) “neither requires, nor allows, a court to consider the cost of imprisonment in determining the appropriate length of a defendant’s term of imprisonment”).

VACATED AND REMANDED.