

APR 23 2009

MOLLY C. DWYER, 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NOT FOR PUBLICATION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.

JESUS PUGA-OCHOA,

Defendant - Appellant.

No. 07-50436

D.C. No. CR-07-00155-LAB

MEMORANDUM*

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

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

Jesus Puga-Ochoa appeals from the district court's denial of his motion to dismiss the indictment charging him with a violation of 8 U.S.C. § 1326. We have

* 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).

jurisdiction pursuant to 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Puga-Ochoa contends that the district court erred by denying his motion to dismiss the indictment because his prior deportation was invalid. We conclude that the prior deportation was proper because Puga-Ochoa's underlying offense was a crime of violence within the meaning of 18 U.S.C. § 16. *See United States v. Gomez-Leon*, 545 F.3d 777, 786-87 (9th Cir. 2008); *see also United States v. Reveles-Espinoza*, 522 F.3d 1044, 1047-48 (9th Cir. 2008) (per curiam).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to 8 U.S.C. § 1326(b). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)(2)).

AFFIRMED; REMANDED to correct the judgment.