

SEP 02 2009

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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NOT FOR PUBLICATION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>LUIS RODRIGUEZ-LAGUNA,</p> <p>Defendant - Appellant.</p>

No. 08-50355

D.C. No. 2:08-cr-00040-AHM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
A. Howard Matz, District Judge, Presiding

Submitted August 20, 2009**

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Luis Rodriguez-Laguna appeals from the 60-month sentence imposed following his guilty-plea conviction for being an illegal alien found in the United States following deportation, in violation of 8 U.S.C. § 1326(a). 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, and we affirm, but remand to correct the judgment.

Rodriguez-Laguna contends that the district court failed to verify that he had read and discussed the presentence report with his attorney, in violation of Fed. R. Crim. P. 32(i)(1)(A). Because Rodriguez-Laguna has made no affirmative allegation that he failed to read the report and review it with his attorney, and has not identified any disputed fact in the PSR, any error did not result in prejudice. *See United States v. Soltero*, 510 F.3d 858, 863-64 (9th Cir. 2007) (per curiam).

We remand the case to the district court with instructions that it delete from the judgment the reference to 8 U.S.C. § 1326(b). *See United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000); *see also 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.