

OCT 27 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NOT FOR PUBLICATION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.

MARIO MARQUEZ-SOLIS,

Defendant - Appellant.

No. 08-50234

D.C. No. 5:08-cr-00008-VAP

MEMORANDUM\*

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

Submitted October 13, 2009\*\*

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Mario Marquez-Solis appeals from the 46-month sentence imposed following his guilty-plea conviction for illegal reentry by an alien following

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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).

deportation, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Marquez-Solis contends that the district court plainly erred by assigning two criminal history points pursuant to U.S.S.G. § 4A1.1(d), because the record does not demonstrate that he was on parole at the time he committed the instant offense. We find no plain error because the uncontested presentence report indicates that Marquez-Solis was on parole at the time, and he has not demonstrated otherwise. *See United States v. Santiago*, 466 F.3d 801, 803 (9th Cir. 2006); *see also United States v. Romero-Rendon*, 220 F.3d 1159, 1161-63 (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. 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.**