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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NOT FOR PUBLICATION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>ULISSES MONTES-GUTIERREZ,</p> <p>Defendant - Appellant.</p>
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No. 08-50511

D.C. No. 2:08-cr-01109-RGK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Ulisses Montes-Gutierrez appeals from the 46-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 concludes this case is 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.

Montes-Gutierrez contends that the district court violated Fed. R. Crim. P. 32 by (1) denying him his right of allocution; and (2) failing to verify whether he had read and reviewed the presentence investigation report with his attorney. The record indicates that any error was harmless because the district court imposed the sentence to which the parties stipulated in Montes-Gutierrez's Fed. R. Crim. P. 11(c)(1)(C) plea agreement. *See United States v. Ortega-Lopez*, 988 F.2d 70, 72-73 (1993); *see also United States v. Soltero*, 510 F.3d 858, 863 (9th Cir. 2007) (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 § 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)).

AFFIRMED; REMANDED to correct the judgment.