

APR 15 2010

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NOT FOR PUBLICATION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.

CLEMENTE MOISES PULIDO-
JAUREGUI,

Defendant - Appellant.

No. 08-50368

D.C. No. 3:07-cr-01091-MLH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Clemente Moises Pulido-Jauregui appeals from the 57-month sentence imposed following his guilty-plea conviction for being a deported alien found in

* 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).

the United States, 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.

Pulido-Jauregui contends, among other things, that the district court erred by applying a 16-level enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(A) because his prior conviction for assault on a federal officer, in violation of 18 U.S.C. § 111, does not constitute a crime of violence. We are precluded from reaching the merits of Pulido-Jauregui's claims by the valid appeal waiver. *See United States v. Bibler*, 495 F.3d 621, 623-24 (9th Cir. 2007); *see also United States v. Jacobo Castillo*, 496 F.3d 947, 957 (9th Cir. 2007) (en banc).

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)).

The government's motion for judicial notice is denied as moot.

AFFIRMED; REMANDED to correct the judgment.