

APR 22 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RODOLFO RIVAS PEREZ,

Defendant - Appellant.

No. 09-50067

D.C. No. 2:08-cr-01193-GW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. Wu, District Judge, Presiding

Submitted April 5, 2010**

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

Rodolfo Rivas Perez appeals from the 30-month sentence imposed following his guilty-plea conviction for being an illegal alien found in the United States

* 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).

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

Rivas Perez contends that the district court erred when it applied a 16-level enhancement pursuant to U.S.S.G. § 2L1.2 because his prior conviction for lewd acts with a child under 14 years of age, in violation of California Penal Code § 288(a), does not qualify as a crime of violence. This contention is foreclosed by *United States v. Medina-Villa*, 567 F.3d 507, 511-16 (9th Cir. 2009).

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)(2). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

Rivas Perez's petition for initial hearing en banc is denied.

AFFIRMED; REMANDED to correct judgment.