

JUN 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NOT FOR PUBLICATION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.

PATRICIA CASTANEDA MADEROS,

Defendant - Appellant.

No. 09-50110

D.C. No. 2:08-cr-01465-RGK

MEMORANDUM*

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

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Patricia Castaneda Maderos appeals from the 46-month sentence imposed following her 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 under 28 U.S.C. § 1291, and we affirm, but remand to correct the judgment.

Maderos contends that the district court miscalculated her Sentencing Guidelines range because it counted prior sentences towards her criminal history score pursuant to U.S.S.G. § 4A1.2, rather than as relevant conduct pursuant to U.S.S.G. § 1B1.3. As Maderos acknowledges, this contention is foreclosed. *See United States v. Cruz-Gramajo*, 570 F.3d 1162, 1167 (9th Cir. 2009).

Maderos also contends that the district court erred by applying two criminal history points pursuant to U.S.S.G. § 4A1.1(d) because she was not on probation when she illegally reentered the United States. The district court did not err because Maderos was sentenced on a new state conviction before she was found in the United States for purposes of 8 U.S.C. § 1326(a). *See id.* at 1174-75.

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 8 U.S.C. § 1326(b)(1). *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 with instructions to correct the judgment.