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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>CARLOS SALAZAR-PENA,</p> <p>Defendant - Appellant.</p> |
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No. 09-50585

D.C. No. 3:09-cr-01628-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted May 24, 2011**

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

Carlos Salazar-Pena appeals from his guilty-plea conviction and 70-month sentence for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Salazar-Pena’s counsel has filed a brief stating there are no grounds for relief,

* 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).

along with a motion to withdraw as counsel of record. The appellant has filed a pro se supplemental brief and the government has filed an answering brief. We have considered both.

Based on our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80-81 (1988), we remand the case to the district court with instructions that it strike the portion of the special condition of supervision which requires Salazar-Pena to “report to the probation officer within 24 hours of any reentry to the United States” because this requirement was included in the written judgment but not imposed at sentencing. *See United States v. Napier*, 463 F.3d 1040, 1042 (9th Cir. 2006); *see also United States v. Hicks*, 997 F.2d 594, 597 (9th Cir. 1993).

Counsel’s motion to withdraw is **GRANTED**, and the district court’s judgment is **AFFIRMED**.

AFFIRMED; REMANDED to correct the judgment.