

OCT 3 2011

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NOT FOR PUBLICATION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.

IVAN RODRIGUEZ-MENDOZA,

Defendant - Appellant.

No. 10-30262

D.C. No. 3:09-cr-05868-RBL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted September 27, 2011**

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

Ivan Rodriguez-Mendoza appeals from his jury conviction and 77-month sentence for illegal reentry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

* 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).

Rodriguez-Mendoza contends that he was denied his Sixth Amendment right to effective assistance of counsel when his trial attorney failed to: (1) object to his appearance at trial in “jail clothing;” (2) give an opening statement; or (3) present any witnesses. We decline to review these claims on direct appeal as the record is insufficiently developed and the legal representation was not so inadequate that it obviously denied Rodriguez-Mendoza his Sixth Amendment right to counsel. *See United States v. Benford*, 574 F.3d 1228, 1231 (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 clerical error resulting in the incorrect reference to 8 U.S.C. § 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)).

AFFIRMED; REMANDED to correct the judgment.