

JAN 19 2012

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NOT FOR PUBLICATION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.

MIGUEL ALVAREZ-ADAME,

Defendant - Appellant.

No. 10-50161

D.C. No. 3:07-cr-00059-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted January 17, 2012**

Before: LEAVY, TALLMAN, and CALLAHAN, Circuit Judges.

Miguel Alvarez-Adame appeals from the 110-month sentence imposed following his conviction 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

* 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).

(1967), Alvarez-Adame's counsel has filed a brief stating there are no grounds for relief, along with a motion to withdraw as counsel of record. Alvarez-Adame filed a pro se supplemental brief and the government filed an answering brief.

Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80-81, 109 (1988), discloses no arguable grounds for relief on direct appeal.

We decline to reconsider Alvarez-Adame's challenge to the validity of the underlying deportation order because this court already decided that issue in *United States v. Alvarez-Adame*, 346 Fed. Appx. 169 (9th Cir. 2009). *See United States v. Scrivner*, 189 F.3d 825, 827 (9th Cir. 1999) (under the law of the case doctrine, one panel of an appellate court will not reconsider questions which another panel has decided on a prior appeal in the same case).

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 reference to 8 U.S.C. § 1326(b). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to section 1326(b)).

Counsel's motion to withdraw is **GRANTED**.

AFFIRMED and REMANDED to correct the judgment.