

JAN 23 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NOT FOR PUBLICATION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.

JESUS LIZARRAGA MORENO,

Defendant - Appellant.

No. 10-50409

D.C. No. 2:09-cr-00851-PSG

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding

Submitted January 17, 2012**

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

Jesus Lizarraga Moreno appeals from his guilty-plea convictions and 240-month sentence for distribution of methamphetamine, being a prohibited person in possession of a firearm, and being an illegal alien found in the United States following deportation, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii), 18

* 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).

U.S.C. § 922(g), and 8 U.S.C. § 1326(a), respectively, with an enhancement for a prior conviction under 21 U.S.C. § 851(a)(1). Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Moreno's counsel has filed a brief stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. We have provided Moreno with the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Moreno waived his right to appeal his sentence with the exception of nonstandard conditions of supervised release. Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80-81 (1988), discloses no arguable grounds for relief as to the defendant's conviction and indicates that the appeal waiver is operative. Accordingly, we dismiss the appeal of the sentence in part. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000). With regard to the nonstandard conditions of supervised release, our independent review of the record disclosed no arguable grounds for relief on direct appeal, and we affirm.

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). *See United*

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

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

AFFIRMED in part; DISMISSED in part; REMANDED to correct the judgment.