

MAR 22 2013

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NOT FOR PUBLICATION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.

ALBERTO PEREZ-NAVA,

Defendant - Appellant.

No. 12-30093

D.C. No. 2:11-cr-02097-FVS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, District Judge, Presiding

Submitted March 12, 2013**

Before: PREGERSON, REINHARDT, and W. FLETCHER, Circuit Judges.

Alberto Perez-Nava appeals from the district court's judgment and challenges the 41-month sentence imposed following his guilty-plea conviction for being an alien in the United States after deportation, in violation of 8 U.S.C.

* 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).

§ 1326. We have jurisdiction under 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Perez-Nava contends that his sentence is substantively unreasonable in light of his family ties and responsibilities, and because the advisory Sentencing Guidelines range overstated his criminal history. The district court did not abuse its discretion in imposing Perez-Nava's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The record reflects that the district court varied downward to reflect its belief that Perez-Nava's criminal history was overstated. In light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors, the below-Guidelines sentence is substantively reasonable. *See id.*

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 section 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)).

AFFIRMED; REMANDED to correct the judgment.