

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 05 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARCO ANTONIO PINTO-LORENZO,

Defendant - Appellant.

No. 07-50466

D.C. No. CR-07-00712-VBF

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Valerie Baker Fairbank, District Judge, Presiding

Submitted July 22, 2008\*\*

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges

Marco Pinto-Lorenzo appeals the sentence imposed following his guilty plea to being an illegal alien found in the United States after deportation, in violation of 8 U.S.C. § 1326(a). He contends that the district court plainly erred by adding a

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

criminal history point under U.S.S.G. § 4A1.1(e) on the ground that he committed the instant offense after his release from jail on a prior conviction, even though in fact he committed the offense before his release from custody. This argument was not presented to the district court. We vacate the sentence and remand for the district court to consider Pinto-Lorenzo's argument regarding § 4A1.1(e).

**VACATED and REMANDED.**