

**SEP 28 2007**

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U.S. COURT OF APPEALS

**Corrected 12/17/2007**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LORENZO JIMENEZ-CARRILLO,

Defendant - Appellant.

No. 05-50885

D.C. No. CR-05-00451-PA-01

MEMORANDUM \*

Appeal from the United States District Court  
for the Central District of California  
Percy Anderson, District Judge, Presiding

Submitted September 24, 2007\*\*

Before: CANBY, TASHIMA and RAWLINSON, Circuit Judges.

Lorenzo Jimenez-Carrillo appeals from his jury conviction and the 33-month sentence imposed for illegal reentry following deportation, in violation of 8 U.S.C.

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

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

§ 1326.

Jimenez-Carrillo's motion to file a pro se reply brief is granted. The Clerk shall file the pro se reply brief received on January 17, 2007.

We reject Jimenez-Carrillo's contention that the admission of the warrant of deportation violated the Confrontation Clause. *See United States v. Bahena-Cardenas*, 411 F.3d 1067, 1075 (9th Cir. 2005).

Jimenez-Carrillo's argument that the district court erred in enhancing his sentence based on his prior conviction is foreclosed by *United States v. Covian-Sandoval*, 462 F.3d 1090, 1096 (9th Cir. 2006) (permitting enhancement for a prior conviction), as is his challenge to the constitutionality of 8 U.S.C. § 1326(b), *see id.* at 1096-97.

We also reject the contention that the district court violated Jimenez-Carrillo's Fifth Amendment rights by imposing as a condition of supervised release a requirement that he report to the probation office within 72 hours of entering the United States. *See United States v. Abbouchi*, No. 05-50962, 2007 WL 2493507, at \*7 (9th Cir. Sept. 6, 2007).

In his pro se brief, Jimenez-Carrillo contends that his prior convictions under California Health and Safety Code Section 11377(a) and California Penal Code Section 273a were not aggravated felony convictions for purposes of 8 U.S.C. § 1326(b). Subsequent to Jimenez-Carrillo's sentencing, the Supreme Court decided

*Lopez v. Gonzales*, 127 S. Ct. 625, 633 (2006), in which it held that “a state offense constitutes a ‘felony punishable under the Controlled Substances Act’ only if it proscribes conduct punishable as a felony under that federal law.” Because Section 11377(a) does not qualify as a drug trafficking offense under *Lopez*, we vacate the sentence and remand for resentencing. *See United States v. Figueroa-Ocampo*, No. 05-50777, 2007 WL 2104787 (9th Cir. July 24, 2007) (holding that *Lopez* applies to criminal sentencing). Additionally, as the government concedes, the conviction under California Penal Code Section 273a was not an aggravated felony. *See United States v. Hernandez-Castellanos*, 287 F.3d 876, 880-881 (9th Cir. 2002).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we instruct the district court to delete from any subsequent judgment the incorrect reference to § 1326(b)(2).

**VACATED and REMANDED.**