

JAN 14 2009

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NOT FOR PUBLICATION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.

CARLOS ENRIQUE PORTILLO-
QUIROZ, aka Adan Salazar- Hernandez,

Defendant - Appellant.

No. 08-50149

D.C. No. 3:08-cr-00320-LAB

MEMORANDUM*

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

Submitted December 17, 2008**

Before: GOODWIN, TROTT, and RYMER, Circuit Judges.

Carlos Enrique Portillo-Quiroz appeals from the 21-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United

* 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).

States, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Portillo-Quiroz contends that his above-Guidelines range sentence is unreasonable because the district court did not give sufficient weight to the Guidelines range relative to other factors enumerated in 18 U.S.C. § 3553(a). We conclude that the district court properly considered the Guidelines range as a factor among all of the § 3553(a) factors, and that the sentence is reasonable. *See United States v. Carty*, 520 F.3d 984, 993-95 (9th Cir. 2008) (en banc); *see also United States v. Mohamed*, 459 F.3d 979, 988-89 (9th Cir. 2006).

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 to § 1326(b)(2)).

AFFIRMED; REMANDED with instructions to correct the judgment.