

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 02 2015

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ISRAEL MARTINEZ-GONZALEZ,

Defendant - Appellant.

No. 13-50389

D.C. No. 3:12-cr-05183-MMA-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Michael M. Anello, District Judge, Presiding

Argued and Submitted May 5, 2015
Pasadena, California

Before: LIPEZ, ** WARDLAW, and MURGUIA, Circuit Judges.

Israel Martinez-Gonzalez appeals his conviction following a jury trial for illegal reentry, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

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

** The Honorable Kermit Victor Lipez, Circuit Judge for the First Circuit, sitting by designation.

Martinez-Gonzalez challenges the removal order underlying his conviction on due process grounds, pursuant to § 1326(d). He contends that his 2009 removal hearing was fundamentally unfair because the Immigration Judge failed to adequately inform Martinez-Gonzalez of his apparent eligibility for voluntary removal and to afford Martinez-Gonzalez an opportunity to apply for that relief. *See United States v. Valdez-Novoa*, 780 F.3d 906, 913–14 (9th Cir. 2015) (citing 8 C.F.R. § 1240.11(a)(2)).

The Immigration Judge advised Martinez-Gonzalez that he may be eligible for voluntary departure and asked Martinez-Gonzalez whether he would like to have a hearing on voluntary departure. This colloquy was not fundamentally unfair. *Cf. United States v. Melendez-Castro*, 671 F.3d 950, 954 (9th Cir. 2012).

AFFIRMED.