

MAR 17 2015

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NOT FOR PUBLICATION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.

NICANDRO CASTANEDA-
GUARDIOLA,

Defendant - Appellant.

No. 14-50244

D.C. No. 3:14-cr-00928-LAB

MEMORANDUM*

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

Submitted March 10, 2015**

Before: FARRIS, WARDLAW, and PAEZ, Circuit Judges.

Nicandro Castaneda-Guardiola appeals from the district court's judgment and challenges the 37-month sentence imposed following his bench-trial conviction for attempted reentry of a removed alien, 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, and we affirm.

Castaneda-Guardiola contends that his sentence should not have exceeded two years because the fact of the prior conviction that subjected him to enhanced penalties under section 1326(b) was neither alleged in the indictment nor proven beyond a reasonable doubt. The Supreme Court rejected this argument in *Almendarez-Torres v. United States*, 523 U.S. 224, 239-47 (1998). Castaneda-Guardiola's contention that *Almendarez-Torres* has been overruled is incorrect. See *Alleyne v. United States*, 133 S. Ct. 2151, 2160 n.1 (2013) (declining to revisit holding in *Almendarez-Torres*).

AFFIRMED.