

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 14 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 19-10248

Plaintiff-Appellee,

D.C. No. 2:18-cr-01326-SPL-1

v.

MEMORANDUM*

LUIS ENRIQUE MONTES-CHAVEZ, AKA
Raymundo Martinez Montes,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Arizona
Steven P. Logan, District Judge, Presiding

Submitted December 8, 2022**

Before: WALLACE, TALLMAN, and BYBEE, Circuit Judges.

Luis Enrique Montes-Chavez appeals from the district court's judgment and challenges his guilty-plea conviction for reentry of a removed alien, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Montes-Chavez contends that the immigration court lacked jurisdiction to

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

enter the 2013 removal order that provided the basis for his conviction because the notice to appear did not specify the date and time of his removal hearing. This argument is foreclosed. *See United States v. Bastide-Hernandez*, 39 F.4th 1187, 1192-93 (9th Cir. 2022) (en banc) (holding that a defective notice to appear does not deprive the immigration court of subject matter jurisdiction).

We do not consider Montes-Chavez's argument that the removal order violated due process under 8 U.S.C. § 1326(d) because Montes-Chavez affirmatively waived this claim in the district court. *See United States v. Depue*, 912 F.3d 1227, 1232 (9th Cir. 2019) (en banc) (intentional abandonment of a claim precludes appellate review).

AFFIRMED.