

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 09 2008

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VICENTE RIOS-RIOS, a.k.a. Vicente
Rios, a.k.a. Mario Hernandez a.k.a. Mario
Rios,

Defendant - Appellant.

No. 08-10199

D.C. No. 2:08-cr-00265-NVW-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Neil V. Wake, District Judge, Presiding

Submitted December 1, 2008**

Before: GOODWIN, CLIFTON and BEA, Circuit Judges.

Appellant pled guilty to an indictment charging illegal reentry after
deportation, in violation of 8 U.S.C. § 1326(a). On appeal, appellant argues that

* 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).

the district court erroneously failed to inform him that, were he to proceed to a jury trial, the government would be required to prove beyond a reasonable doubt that he was convicted of a prior offense. Appellant concedes that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See also *United States v. Pacheco-Zepeda*, 234 F.3d 411 (9th Cir. 2000).

A review of the record and the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. See *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Accordingly, we summarily affirm the district court's judgment.

AFFIRMED.