

JUL 21 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS ALBERTO CASTRO-  
QUINTERO,

Defendant - Appellant.

No. 08-10410

D.C. No. 2:08-CR-00267-FJM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Frederick J. Martone, District Judge, Presiding

Submitted July 14, 2009\*\*

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

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\* 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).

Jesus Alberto Castro-Quintero appeals from the 40-month sentence imposed following his guilty-plea conviction for re-entry after deportation, in violation of 8 U.S.C. § 1326(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Castro-Quintero contends that the district court abused its discretion at sentencing by failing to consider the time he had already spent in state custody. The valid and enforceable appeal waiver precludes our review of this contention. *See United States v. Bibler*, 495 F.3d 621, 623-24 (9th Cir. 2007). Contrary to Castro-Quintero's contention, the sentence is not illegal and he did not preserve the right to appeal issues regarding the proper application of the United States Sentencing Guidelines. *See id.* Finally, Castro-Quintero's contention that the district court breached the plea agreement fails because he raised it for the first time in his reply brief, *see United States v. Romm*, 455 F.3d 990, 997 (9th Cir. 2006), and the district court was not a party to the plea agreement, *see United States v. Lewis*, 979 F.2d 1372, 1375 (9th Cir. 1992).

**AFFIRMED.**