

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 04 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE TORRES-CALDERON,

Defendant - Appellant.

No. 08-10357

D.C. No. 5:07-CR-00745-JDF

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Jeremy D. Fogel, District Judge, Presiding

Submitted July 29, 2009\*\*

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Jose Torres-Calderon appeals from the 48-month sentence imposed following his guilty plea conviction for illegal reentry after deportation in violation

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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).

of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Torres-Calderon contends that the district court erred when it imposed a sentence above the advisory range established by the United States Sentencing Guidelines, and failed to state sufficient facts to support the sentence. These contentions lack merit. *See U.S. v. Carty*, 520 F.3d 984, 990-95 (9th Cir. 2008) (en banc).

Torres-Calderon's motion to file the Pre-Sentence Report under seal, received in this court on November 26, 2008, is deemed filed. That motion and the motion to file supplemental excerpts of record are granted.

**AFFIRMED.**