

OCT 01 2009

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NOT FOR PUBLICATION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.

ALBERTO ALLAN-SELVIN,

Defendant - Appellant.

No. 08-50363

D.C. No. 3:08-cr-07008-H-1

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALBERTO ALLAN-SELVIN,

Defendant - Appellant.

No. 08-50364

D.C. No. 3:07-cr-01434-H-1

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted July 7, 2009**
Pasadena, California

Before: KOZINSKI, Chief Judge, FERNANDEZ and N.R. SMITH, Circuit Judges.

The district court did not abuse its discretion in denying Allan-Selvin's motion to dismiss for preindictment delay because its finding that Allan was not prejudiced was not clearly erroneous.

Evidence of Allan-Selvin's prior deportations was not inadmissible under Rule 404(b) of the Federal Rules of Evidence because prior deportation is an element of the offense. Its admission therefore was not plain error. *See United States v. Cruz-Escoto*, 476 F.3d 1081, 1088 (9th Cir. 2007).

The district court did not err in its determination that California Penal Code § 496(a) is categorically an aggravated felony under 8 U.S.C. § 1101(a)(43)(G). *See Verdugo-Gonzalez v. Holder*, No. 06-73733, slip op. 13261, 13268 (9th Cir. Sept. 14, 2009).

AFFIRMED.

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