

DEC 11 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NOT FOR PUBLICATION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 - Appellant,

v.

LUIS ENRIQUE CRUZ-VALLES,

Defendant - Appellee.

No. 08-50292

D.C. No. 3:08-cr-00401-H

MEMORANDUM*

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

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

The government appeals from the district court's judgment dismissing an indictment that charged Luis Enrique Cruz-Valles with being a deported alien

* 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).

found in the United States, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *see United States v. Gonzalez-Valerio*, 342 F.3d 1051, 1053 (9th Cir. 2003), and we vacate and remand.

The government contends that the judgment must be reversed in light of our intervening decisions in *United States v. Marguet-Pillado*, 560 F.3d 1078 (9th Cir.), *cert. denied*, 2009 WL 2947085 (2009), and *Martinez-Madera v. Holder*, 559 F.3d 937 (9th Cir. 2009). We agree.

We decline to address Cruz-Valles' argument that *Marguet-Pillado* and *Martinez-Madera* should be overruled. *See United States v. Lynch*, 367 F.3d 1148, 1158 (9th Cir. 2004) (*per curiam*).

We therefore vacate and remand for proceedings consistent with this disposition.

VACATED and REMANDED.