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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>FRANCISCO JAVIER GARCIA-MANZO,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 09-50313

D.C. No. 3:08-CR-03690-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Francisco Javier Garcia-Manzo appeals from the 70-month sentence imposed following his guilty-plea conviction for attempted entry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and

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

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

we affirm.

Garcia-Manzo contends that the district court procedurally erred by failing to address his policy challenge to the enhancements that apply under U.S.S.G. § 2L1.2(b)(1)(A). The record reflects that the district court responded to Garcia-Manzo's argument and therefore did not procedurally err. *See United States v. Carty*, 520 F.3d 884, 992-93 (9th Cir. 2008) (en banc).

Garcia-Manzo also contends that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), should be overruled. As Garcia-Manzo recognizes, this contention is foreclosed. *See United States v. Grajeda*, 581 F.3d 1186, 1197 (9th Cir. 2009) (recognizing that although the continuing viability of *Almendarez-Torres* has been called into question, this court is bound to follow controlling Supreme Court precedent).

AFFIRMED.