

SEP 21 2010

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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NOT FOR PUBLICATION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.

JOAQUIN PARAMO-MACIEL,

Defendant - Appellant.

No. 09-50550

D.C. No. 3:08-cr-03170-BEN-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN and N.R. SMITH, Circuit Judges.

Joaquin Paramo-Maciel appeals the sentence imposed following his guilty plea to attempted entry after deportation in violation of 8 U.S.C. § 1326.

* 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).

Paramo-Maciel contends that the district court erred when it imposed a sentence in excess of the two-year statutory maximum under 8 U.S.C. § 1326. He asserts that *Almendarez-Torres v. United States*, 523 U.S. 224, 226-27 (1998), has been effectively overruled by *Nijhawan v. Holder*, 129 S. Ct. 2294 (2009). As Paramo-Maciel concedes, *Almendarez-Torres* has never been expressly overruled and continues to constitute binding precedent. *See, e.g., United States v. Garcia-Cardenas*, 555 F.3d 1049, 1051 (9th Cir. 2009) (*per curiam*); *United States v. Martinez-Rodriguez*, 472 F.3d 1087, 1093 (9th Cir. 2007).

AFFIRMED.