

JUN 08 2011

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NOT FOR PUBLICATION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.

BENITO TINOCO, a.k.a. Javier Fonseca
Areaga, a.k.a. Javier Fonseca,

Defendant - Appellant.

No. 10-50139

D.C. No. 2:09-cr-01143-SJO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted May 24, 2011**

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

Benito Tinoco appeals from the 37-month sentence imposed following his guilty-plea conviction for being an illegal alien found in the United States

* 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).

following deportation, in violation of 8 U.S.C. § 1326(a). We have jurisdiction under 28 U.S.C. § 1291, and we dismiss.

Tinoco contends that the district court violated Federal Rule of Criminal Procedure 32(i)(4)(A)(ii) by denying him his right of allocution. Tinoco waived his right to appeal this issue and has failed to show that the waiver is invalid.

Accordingly, we dismiss in light of the valid appeal waiver. *See United States v. Joyce*, 357 F.3d 921, 924 (9th Cir. 2004).

DISMISSED.