

JUN 29 2012

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NOT FOR PUBLICATION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.

BERYL CHRIS BUIZA SILVA,

Defendant - Appellant.

No. 11-10554

D.C. No. 3:11-cr-00053-JSW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Submitted June 26, 2012**

Before: SCHROEDER, HAWKINS, and GOULD, Circuit Judges.

Beryl Chris Buiza Silva appeals from the 60-month sentence imposed following his guilty-plea conviction for reentry of a removed alien, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Silva contends that his below-Guidelines sentence is substantively unreasonable because the district court focused too heavily on his 2001 aggravated felony conviction and failed to give sufficient weight to the mitigating sentencing factors. The sentence imposed is substantively reasonable in light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

Silva also contends that his sentence to an aggravated term of incarceration under 8 U.S.C. § 1326(b)(2) was improper because the government did not allege in the indictment that he was previously convicted of an aggravated felony. As Silva concedes, this contention is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *See United States v. Pacheco-Zepeda*, 234 F.3d 411, 412 (9th Cir. 2000).

AFFIRMED.