

SEP 20 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NOT FOR PUBLICATION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.

GONZALO ANAYA-SANTIAGO,

Defendant - Appellant.

No. 11-50236

D.C. No. 3:10-cr-01966-DMS

MEMORANDUM*

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

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Gonzalo Anaya-Santiago appeals from the 63-month sentence imposed following his bench-trial conviction for being a deported alien found in the United States, 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).

Anaya-Santiago contends that the district court erred by imposing a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii) because his conviction under Indiana Code § 35-42-4-3(b) does not qualify as sexual abuse of a minor under *Estrada-Espinoza v. Mukasey*, 546 F.3d 1147 (9th Cir. 2008) (en banc). The district court correctly determined that the Indiana conviction constituted sexual abuse of a minor warranting the 16-level enhancement. *See United States v. Medina-Villa*, 567 F.3d 507, 513-16 (9th Cir. 2009). We reject Anaya-Santiago's argument that *Medina-Villa* is no longer good law.

Anaya-Santiago also contends that he was subject to the 2-year statutory maximum of 8 U.S.C. § 1326(a), rather than the 20-year maximum of section 1326(b)(2), because the Supreme Court implicitly overruled *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), in *Nijhawan v. Holder*, 557 U.S. 29 (2009), and *United States v. O'Brien*, 130 S. Ct. 2169 (2010). We have previously considered and rejected this argument. *See United States v. Ruiz-Apolonio*, 657 F.3d 907, 920-21 & n.11 (9th Cir. 2011).

AFFIRMED.