

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 16 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS CHAVARRIA-ARELLANO,

Defendant - Appellant.

No. 13-30211

D.C. No. 2:12-cr-06050-FVS-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, Senior District Judge, Presiding

Argued and Submitted June 6, 2014
Seattle, Washington

Before: McKEOWN and WATFORD, Circuit Judges, and ROTHSTEIN, Senior
District Judge.**

Jesus Chavarria-Arellano appeals the district court's denial of his
motion to dismiss an indictment charging him with illegal reentry after

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

** The Honorable Barbara Jacobs Rothstein, Senior District Judge for the
U.S. District Court for the Western District of Washington, sitting by designation.

deportation under 8 U.S.C. § 1326. He contends that § 1326(d), which permits collateral challenges to the “underlying deportation order,” permits him to collaterally attack the May 1998 administrative voluntary departure order.

The indictment charged Chavarria-Arellano with being present in the United States on or about August 1, 2012, after having been subjected to expedited removal on July 1, 1998 and after having had his removal reinstated on April 5, 2000. But the indictment does not reference the May 1998 order, and the plain language of the statute does not allow for collateral challenges to orders not “underlying” the indictment.

Our recent holding in *United States v. Sanchez-Aguilar*, 719 F.3d 1108 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 364 (2013), forecloses Chavarria-Arellano’s due process argument, as he acknowledged in his briefs and before the panel. Officials’ failure to inform a “[n]on-admitted alien[] . . . who seek[s] entry at the border” of the right to request withdrawal of his application for admission into the United States does not violate due process. *Id.* at 1112. Chavarria-Arellano made no argument that he is not a non-admitted alien.

AFFIRMED.