

DEC 12 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JOSE LUIS MUNOZ-GARCIA,</p> <p>Defendant - Appellant.</p>
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No. 14-10028

D.C. No. 4:13-cr-00501-RCC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Marvin E. Aspen, District Judge, Presiding**

Submitted December 9, 2014***

Before: WALLACE, LEAVY, and BYBEE, Circuit Judges.

Jose Luis Munoz-Garcia appeals from the district court’s judgment and challenges his guilty-plea conviction and 70-month sentence for reentry after

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

** The Honorable Marvin E. Aspen, Senior United States District Judge for the Northern District of Illinois, sitting by designation.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Munoz-Garcia contends that his conviction and sentence violate the Fifth and Sixth Amendments because the fact of the prior conviction that subjected him to enhanced penalties under section 1326(b)(2) was not alleged in the indictment. As Munoz-Garcia acknowledges, we are bound by *Almendarez-Torres v. United States*, 523 U.S. 224, 239-47 (1998), in which the Supreme Court rejected this argument.

AFFIRMED.