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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. AMADEO MEDINA, Defendant - Appellant.	No. 14-50023 D.C. No. 3:12-cr-00037-WQH MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted December 9, 2014**

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

Amadeo Medina appeals from the district court's judgment and challenges his jury-trial conviction and 94-month sentence for attempted entry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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* 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).

Medina contends that his conviction and sentence violate the Sixth Amendment because the fact of the prior conviction that subjected him to enhanced penalties under section 1326(b) was neither alleged in the indictment nor proven to the jury. The Supreme Court rejected this argument in *Almendarez-Torres v. United States*, 523 U.S. 224, 239-47 (1998). Medina's contention that *Almendarez-Torres* has been implicitly overruled is incorrect. *See Alleyne v. United States*, 133 S. Ct. 2151, 2160 n.1 (2013) (expressly declining to revisit holding in *Almendarez-Torres*).

AFFIRMED.