

OCT 19 2015

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NOT FOR PUBLICATION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.

GEYEN AVILA-CORREA,

Defendant - Appellant.

No. 14-50436

D.C. No. 3:14-cr-00172-DMS

MEMORANDUM*

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

Submitted October 14, 2015**

Before: SILVERMAN, BYBEE, and WATFORD, Circuit Judges.

Geyen Avila-Correa appeals from the district court's judgment and challenges the 63-month sentence imposed following his guilty-plea conviction for being a removed alien found in the United States, in violation of 8 U.S.C. § 1326.

We dismiss.

* 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).

Avila-Correa contends that his sentence is illegal because the fact of his prior felony conviction, which increased the statutory maximum sentence, was not charged in the information. The government argues that this appeal should be dismissed based on an appeal waiver contained in the parties' plea agreement. We review de novo whether to enforce an appeal waiver. *See United States v. Watson*, 582 F.3d 974, 981 (9th Cir. 2009). Contrary to Avila-Correa's contention, the Supreme Court's holding in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), remains binding. *See Alleyne v. United States*, 133 S. Ct. 2151, 2160 n.1 (2013) (declining to revisit *Almendarez-Torres*); *United States v. Leyva-Martinez*, 632 F.3d 568, 569 (9th Cir. 2011) (per curiam) ("We have repeatedly held . . . that *Almendarez-Torres* is binding unless it is expressly overruled by the Supreme Court."). Accordingly, Avila-Correa's sentence is not illegal, and we dismiss this appeal in light of the valid appeal waiver. *See Watson*, 582 F.3d at 988.

DISMISSED.