

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 08 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MIGUEL ANGEL ARIAS,

Defendant - Appellant.

No. 07-30157

D.C. No. CR-06-00045-EFS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Edward F. Shea, District Judge, Presiding

Submitted December 3, 2007**

Before: GOODWIN, WALLACE and FISHER, Circuit Judges.

Miguel Angel Arias appeals from the 84-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 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 finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Arias contends that his Fifth and Sixth Amendment rights were violated because the district court enhanced his sentence based on the fact that he was removed subsequent to a felony conviction, a fact that was neither admitted nor proven beyond a reasonable doubt to a jury. However, Arias admitted pursuant to his plea agreement and during his plea colloquy that he was removed from the United States in 2004, subsequent to his 1989 felony conviction for attempted murder. We therefore conclude that the district court did not make findings beyond the fact of a prior conviction when it determined that Arias was previously removed subsequent to a felony conviction. *See* 8 U.S.C. § 1326(b); *United States v. Bolanos-Hernandez*, 492 F.3d 1140, 1148 (9th Cir. 2007).

Arias also contends that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) is no longer good law. We reject this contention. *See Bolanos-Hernandez*, 492 F.3d at 1148.

AFFIRMED.