

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

APR 08 2008

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDUARDO ARAZA,

Defendant - Appellant.

No. 06-50563

D.C. No. CR-05-02142-DMS

**SUPPLEMENTAL  
MEMORANDUM\***

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

Argued and Submitted November 7, 2007  
Pasadena, California

Before: FARRIS and PAEZ, Circuit Judges, and BLOCK,\*\* District Judge.

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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 Honorable Frederic Block, Senior United States District Judge for the Eastern District of New York, sitting by designation.

Eduardo Araza appeals from the 42-month sentence imposed following his conviction<sup>1</sup> for importation of marijuana, in violation of 21 U.S.C. §§ 952 and 960, and possession of marijuana with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

Araza contends that the district court erred by treating the Guidelines range as the presumptive sentence. We reject this contention. The record indicates that the district court treated the Guidelines range as “the starting point and the initial benchmark.” *Gall v. United States*, 128 S. Ct. 586, 596 (2007). The district court then analyzed the Guidelines-recommended sentence in light of the 18 U.S.C. § 3553(a) sentencing factors and the unique facts of Araza’s case. *See United States v. Carty*, --- F.3d ----, 2008 WL 763770 at \*6 (9th Cir. Mar. 24, 2008) (en banc). There was no error.

Araza also contends that the district court erred by failing to consider all the sentencing factors under § 3553(a). We disagree. “The district court need not tick

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<sup>1</sup> We affirmed Araza’s conviction in a separate, unpublished memorandum disposition. *See United States v. Araza*, No. 06-50563, 2007 WL 4463072 (9th Cir. Dec. 18, 2007). That disposition indicated that we would vacate submission of Araza’s challenge to the reasonableness of his sentence pending the en banc decision in *United States v. Carty*, --- F.3d ----, 2008 WL 763770 (9th Cir. Mar. 24, 2008) (en banc).

off each of the 3553(a) factors to show that it has considered them.” *Id.* at \*5. The record indicates that the district court considered the relevant factors.

Araza also argues that the district court erred by enhancing his sentence on the basis of his prior convictions where the fact of those convictions was not found by a jury.<sup>2</sup> As Araza acknowledges, however, this argument remains foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), as well as our own precedents. *See, e.g., United States v. Maciel-Vasquez*, 458 F.3d 994, 995-96 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 2097 (2007).

**AFFIRMED.**

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<sup>2</sup>Araza raised this issue in his opening brief, but we did not address it in the original memorandum disposition.