

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 22 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE PABLO RODRIGUEZ-VENEGAS,

Defendant - Appellant.

No. 07-50332

D.C. No. CR-06-02643-MJL-1

MEMORANDUM\*

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

Submitted April 10, 2008\*\*  
Pasadena, California

Before: CANBY, KLEINFELD, and BYBEE, Circuit Judges.

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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 finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Rodriguez-Venegas' argument challenging continued applicability of Almendarez-Torres v. United States<sup>1</sup> to 8 U.S.C. § 1326(b)(2) is foreclosed by United States v. Rodriguez-Lara<sup>2</sup> and subsequent authority.

Rodriguez-Venegas' double counting argument addressed to § 2L1.2(b) of the guidelines is foreclosed by United States v. Luna-Herrera<sup>3</sup> and United States v. Blanco-Gallegos.<sup>4</sup> Though the significance of the guidelines calculation has changed since then because of United States v. Booker<sup>5</sup> and United States v. Carty,<sup>6</sup> the double counting issue regarding the guidelines calculation under § 2L1.2 has not.

AFFIRMED.

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<sup>1</sup> 523 U.S. 224 (1998).

<sup>2</sup> 421 F.3d 932 (9th Cir. 2005).

<sup>3</sup> 149 F.3d 1054 (9th Cir. 1998).

<sup>4</sup> 188 F.3d 1072 (9th Cir. 1999).

<sup>5</sup> 543 U.S. 220 (2005).

<sup>6</sup> \_\_\_ F.3d \_\_\_, 2008 WL 763770 (9th. Cir. March 24, 2008).