

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 24 2007

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MANUEL SALAZAR-LOPEZ,

Defendant - Appellant.

No. 06-50438

D.C. No. CR-05-01834-MLH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Argued and Submitted May 16, 2007
Pasadena, California

Before: FISHER and CLIFTON, Circuit Judges, and FOGEL,** District Judge.

We address here Manuel Salazar-Lopez's challenge to his 8 U.S.C. § 1326 conviction.¹ We have jurisdiction under 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 Honorable Jeremy D. Fogel, United States District Judge for the Northern District of California, sitting by designation.

¹We resolve his sentencing challenges in a separate published opinion.

After reviewing the record, we hold that there was sufficient evidence for a jury to conclude that Salazar-Lopez was not under official restraint for the entire time that he was within the United States. Agent Garcia testified that Salazar-Lopez was not observed by camera until after seismic sensors within the United States had been triggered; thus he was already in the United States before any observation that could constitute official restraint began. *See United States v. Cruz-Escoto*, 476 F.3d 1081, 1085-86 (9th Cir. 2007) (holding that aliens “who evade government observation *while crossing* the border are deemed to be free from official restraint, regardless of the distance they travel between entry and arrest”); *United States v. Vela-Robles*, 397 F.3d 786, 789 (9th Cir. 2005) (holding that detection by seismic sensors does not constitute official restraint). While Salazar-Lopez argues that the lack of testimony from the camera operator creates a reasonable doubt as to whether he was under observation from the moment he crossed the border, his case is indistinguishable from *United States v. Bello-Bahena*, 411 F.3d 1083, 1088 (9th Cir. 2005). As *Bello-Bahena* held that missing testimony from a scope operator, on the issue of continuous observation, did not require a judgment of acquittal in the similar circumstances of that case, *see id.*, we affirm Salazar-Lopez’s conviction.

AFFIRMED.