

DEC 21 2007

CATHY A. CATTERSON, 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NOT FOR PUBLICATION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.

BENITO MARCIAL-GONZALEZ,

Defendant - Appellant.

No. 07-30118

D.C. No. CR-06-06047-WFN

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Wm. Fremming Nielsen, Senior Judge, Presiding

Submitted December 17, 2007**

Before: GOODWIN, REINHARDT and W. FLETCHER, Circuit Judges.

We have reviewed the record and the opening brief and conclude that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

07-30118

curiam) (stating standard). The United States Supreme Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), applies here and remains binding on this court until the Court overrules it. *See United States v. Weiland*, 420 F.3d 1062, 1079-80 n.16 (9th Cir. 2005) (noting that this court remains bound by the Supreme Court's holding in *Almendarez-Torres* and that a district court may enhance a sentence on the basis of prior convictions, even if the fact of those convictions is not found by a jury beyond a reasonable doubt). Further, where as here, defendant admits to the date of the prior removal and the fact of the prior conviction is readily available from judicially noticeable documents, "[t]he district court [can] . . . readily conclude that [defendant] was removed 'subsequent to' his prior conviction, without making any factual findings not apparent from the face of the conviction documents." *See United States v. Beltran-Munguia*, 489 F.3d 1042, 1052-53 (9th Cir. 2007); *United States v. Grisel*, 488 F.3d 844, 847 (9th Cir. 2007) (en banc).

Accordingly, the government's unopposed motion for summary affirmance of the district court's judgment is granted.

AFFIRMED.