

JAN 07 2009

MOLLY C. DWYER, 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NOT FOR PUBLICATION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.

BENJAMIN MARTINEZ-  
VALDIOSERA,

Defendant - Appellant.

No. 08-30038

D.C. No. CR-07-02087-1-RHW

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Robert H. Whaley, District Judge, Presiding

Submitted December 17, 2008\*\*

Before: GOODWIN, WALLACE, and TROTT, Circuit Judges.

Benjamin Martinez-Valdiosera appeals from the 60-month sentence imposed following his guilty-plea conviction for illegal reentry after deportation, in

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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).

violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Martinez-Valdiosera contends that the district court committed error under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), by enhancing his sentence beyond the two-year statutory maximum, because the temporal relationship between his prior removal and qualifying prior conviction was not alleged in the indictment, and he did not admit these facts pursuant to his guilty plea. We disagree. The indictment alleged the date of Martinez-Valdiosera's removal, and the district court's determination that the removal occurred after his prior conviction did not violate *Apprendi*. See *United States v. Calderon-Segura*, 512 F.3d 1104, 1111 (9th Cir. 2008); *United States v. Salazar-Lopez*, 506 F.3d 748, 752-56 (9th Cir. 2007).

**AFFIRMED.**