

JAN 14 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NOT FOR PUBLICATION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.

TOMAS SALINAS-RUIZ,

Defendant - Appellant.

No. 08-30168

D.C. No. 2:05-cr-02139-EFS-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Edward F. Shea, District Judge, Presiding

Submitted December 17, 2008**

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

Tomas Salinas-Ruiz appeals from the district court's order denying his motion to dismiss the indictment charging him with being an alien in the United

* 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).

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

Salinas-Ruiz contends that the district court erred by denying his motion to dismiss the indictment because the indictment did not allege that his prior removal occurred subsequent to a felony conviction. This contention fails. *See Almendarez-Torres v. United States*, 523 U.S. 224, 226-27 (1998); *see also United States v. Salazar-Lopez*, 506 F.3d 748, 752 (9th Cir. 2007).

AFFIRMED.