NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 28 2009

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

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JAVIER ADRIAN CASTRO-CASTRO, Defendant - Appellant.	No. 08-30105 D.C. No. 2:07-cr-06020-EFS-1 MEMORANDUM*

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

Submitted January 22, 2009**
Seattle, Washington

Before: BEEZER, TALLMAN and M. SMITH, Circuit Judges.

Javier Adrian Castro-Castro appeals the district court's denial of his motion to dismiss the indictment charging him with being an alien in the United States after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction to hear this

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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).

appeal under 28 U.S.C. § 1291. Because the parties are familiar with the facts, we do not recount them here except as necessary to explain our decision.

Castro argues that his indictment was flawed because he believes he was never provided with notice of his right to seek review of the expedited administrative removal order or to contest the grounds of removal. We conclude that the INS's service on Castro was effective, and that Castro's due process rights were not violated.

Further, even if there was a due process violation, Castro cannot demonstrate prejudice. Castro was convicted of assault in the third degree, which he concedes is "an aggravated felony pursuant to INA § 101(a)(43), 8 U.S.C. § 1101(a)(43)." As Castro does not offer any plausible grounds for relief from deportation that he would have put forth had he been properly served with the Notice of Intent, he cannot demonstrate prejudice. *United States v. Garcia-Martinez*, 228 F.3d 956, 963 (9th Cir. 2000).

We AFFIRM the district court's denial of the motion to dismiss the indictment.

AFFIRM.