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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PEDRO ALEGRIA-GONZALEZ, AKA
Carlos Alfredo Alegria,

Defendant - Appellant.

No. 08-10123

D.C. No. 3:07-cr-00095-LRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted December 17, 2008**

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

Pedro Alegria-Gonzalez appeals from the 41-month sentence imposed following his guilty-plea conviction for unlawful reentry by a deported, removed,

* 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).

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

Alegria-Gonzalez contends that the district court procedurally erred in fashioning his sentence by failing to meaningfully consider his arguments and the factors listed in 18 U.S.C. § 3553(a). We conclude that the district court did not procedurally err. *See United States v. Carty*, 502 F.3d 984, 995 (9th Cir. 2008) (en banc).

Alegria-Gonzalez also contends based on *Apprendi v. New Jersey*, 530 U.S. 466 (2000), that *Almendarez-Torres*, 523 U.S.224 (1998) is no longer good law and that the judicial factfinding used to increase his sentence pursuant to 8 U.S.C. § 1326(b) violated the Fifth and Sixth Amendments. These contentions are foreclosed. *See United States v. Becerril-Lopez*, 541 F.3d 881, 893 (9th Cir. 2008).

Finally, Alegria-Gonzalez contends that the fact of his prior qualifying conviction and the fact of his prior removal were not alleged in the indictment. We conclude that any error was harmless. *See United States v. Calderon-Segura*, 512 F.3d 1104, 1111 (9th Cir. 2008).

AFFIRMED.