

FEB 26 2009

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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NOT FOR PUBLICATION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.

JACINTO ALONZA-MENDOZA,

Defendant - Appellant.

No. 08-50038

D.C. No. CR-03-01617-BTM

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Barry T. Moskowitz, District Judge, Presiding

Submitted February 18, 2009\*\*

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Jacinto Alonza-Mendoza appeals from the 78-month sentence imposed,  
upon remand, following his jury-trial conviction for being a deported alien found

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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).

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

Alonza-Mendoza contends that the district court erred at resentencing by not addressing on the merits his contention that his Sixth Amendment rights were violated because the fact of his prior removal was neither alleged in the indictment nor submitted to the jury. We conclude that the district court did not err because the law of the case precluded it from re-examining issues previously decided by this Court during Alonza-Mendoza's first appeal. *See United States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 2005). We further conclude that none of the exceptions to the law of the case doctrine apply. *See id.* Moreover, we conclude that any intervening law would not change the result. *See United States v. Salazar-Lopez*, 506 F.3d 748, 752-53 (9th Cir. 2007).

We also decline to reconsider Alonza-Mendoza's contentions that:

(1) *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), has been overruled; (2) *Almendarez-Torres*'s holding should be limited; and (3) 18 U.S.C. § 1326(b) is unconstitutional. *See Cuddy*, 147 F.3d at 1114.

We further conclude that Alonza-Mendoza raised no new constitutional claims upon remand.

Alonza-Mendoza's motion to strike appellee's supplemental excerpts of record is denied.

**AFFIRMED.**