

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 31 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SANTIAGO HERNANDEZ-GOMEZ,

Defendant - Appellant.

No. 08-10443

D.C. No. 2:07-CR-00277-RLH-
GWF-1

MEMORANDUM *

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, Chief District Judge, Presiding

Submitted August 20, 2009**

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

* 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).

Santiago Hernandez-Garcia appeals from the 36-month sentence imposed following his guilty-plea conviction for being a deported alien found unlawfully in the United States in violation of 8 U.S.C. § 1326.

Hernandez-Garcia contends that his sentence violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because it was based on a prior aggravated felony conviction not charged or admitted. Hernandez-Garcia concedes that his argument is foreclosed, *see e.g., United States v. Salazar-Lopez*, 506 F.3d 748, 751 n.3 (9th Cir. 2007); *United States v. Pacheco-Zepeda*, 234 F.3d 411 (9th Cir. 2000); and that he raises it to preserve it for potential future review.

AFFIRMED.