

OCT 22 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NOT FOR PUBLICATION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.

VICTOR ANGEL SANCHEZ-CALLE,

Defendant - Appellant.

No. 08-30477

D.C. No. 1:08-CR-30004-OMP

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Owen M. Panner, District Judge, Presiding

Submitted October 13, 2009\*\*

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Victor Angel Sanchez-Calle appeals from the 27-month sentence imposed following his guilty-plea conviction for illegal reentry, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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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).

Sanchez-Calle contends the district court violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000), by enhancing his sentence beyond the two-year statutory maximum because the temporal relationship between his prior removal(s) and his prior felony conviction was not alleged in the indictment, admitted by him, or proved beyond a reasonable doubt. Because the indictment alleged at least one date of removal which Sanchez-Calle admitted at the Rule 11 hearing, the district court's determination that the removal took place subsequent to a prior felony conviction did not violate *Apprendi*. See *United States v. Mendoza-Zaragoza*, 567 F.3d 431, 434 (9th Cir. 2009); see also *United States v. Beltran-Munguia*, 489 F.3d 1042, 1053 (9th Cir. 2007).

Sanchez-Calle also contends that we should apply the the doctrine of constitutional avoidance to limit the holding of *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). This contention is foreclosed by *United States v. Grisel*, 488 F.3d 844, 846-47 (9th Cir. 2007) (en banc).

**AFFIRMED.**