

DEC 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JOSE MANUEL HUERTA-CABRERA,</p> <p>Defendant - Appellant.</p>
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No. 09-10166

D.C. No. 2:08-cr-00052-LDG-PAL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Lloyd D. George, District Judge, Presiding

Submitted November 17, 2009**

Before: ALARCÓN, TROTT and TASHIMA, Circuit Judges.

Jose Huerta-Cabrera appeals the sentence imposed following his guilty plea to being a deported alien found unlawfully in the United States in violation of 8 U.S.C. § 1326.

* 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).

Huerta-Cabrera 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. Huerta-Cabrera 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.