

JAN 11 2010

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NOT FOR PUBLICATION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.

FERNANDO SALAZAR-GALLARDO,

Defendant - Appellant.

No. 09-50077

D.C. No. 3:08-CR-02709-LAB-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and FISHER, 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Fernando Salazar-Gallardo appeals the sentence imposed following his guilty plea to being a deported alien found in the United States in violation of 8 U.S.C. § 1326.

Salazar-Gallardo alleges that *Almendarez-Torres v. United States*, 523 U.S. 224, 227 (1998), was effectively overruled or limited by the doctrine of avoidance of constitutional doubt, and 8 U.S.C. § 1326(b) is unconstitutional. Salazar-Gallardo concedes that his contentions are foreclosed by our prior decisions, *see United States v. Grisel*, 488 F.3d 844, 847 (9th Cir. 2007) (en banc) (holding that the date of a prior conviction is part of the "fact" of a prior conviction for *Apprendi* purposes); *United States v. Salazar-Lopez*, 506 F.3d 748, 751 n. 3 (9th Cir. 2007); *United States v. Maciel-Vasquez*, 458 F.3d 994, 995-96 (9th Cir. 2006) (holding that 8 U.S.C. § 1326(b)(2) is constitutional), and that he raises them to preserve them for potential future review.

AFFIRMED.