

OCT 04 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NOT FOR PUBLICATION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.

ALBERTO HERNANDEZ-OREGEL,

Defendant - Appellant.

No. 09-10055

D.C. No. 5:08-CR-00166-JF

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeremy D. Fogel, District Judge, Presiding

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Alberto Hernandez-Oregel appeals from the 90-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. §1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Hernandez-Oregel contends, for the first time on appeal, that the district court erred by enhancing his sentence under 18 U.S.C. § 1326(b) because the government never provided the court with the statute of his prior conviction. We take judicial notice of the abstract of judgment for Hernandez-Oregel's 1981 conviction for assault with a deadly weapon, in violation of California Penal Code § 245(a), a categorical felony crime of violence that qualified Hernandez-Oregel for a sentencing enhancement under section 1326(b). *See United States v. Heron-Salinas*, 566 F.3d 898, 899 (9th Cir. 2009); *see also United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007).

Hernandez-Oregel also contends that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), should be overruled. As he concedes, this contention fails. *See Agostini v. Felton*, 521 U.S. 203, 237 (1997).

Finally, Hernandez-Oregel contends that the sentence is substantively unreasonable. The record reflects that there was no procedural error and that, in light of the totality of the circumstances, the sentence within the Guidelines range is substantively reasonable. *See United States v. Carty*, 520 F.3d 984, 992-93 (9th Cir. 2008) (en banc).

The government's request for judicial notice is granted.

AFFIRMED.