

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 22 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 15-50527

Plaintiff-Appellee,

D.C. No. 3:15-cr-01494-LAB

v.

MEMORANDUM*

JUAN LEON-CORDOVA,

Defendant-Appellant.

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

Submitted February 14, 2017**

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

Juan Leon-Cordova appeals from the district court's judgment and challenges the 60-month sentence following his jury-trial conviction for being a removed 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 Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Leon-Cordova contends that the district court erred by enhancing his sentence under section § 1326(b). Specifically, he argues that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), which permits an enhancement based on the existence of a prior felony, is invalid under *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). As Leon-Cordova acknowledges, this argument is foreclosed. *See United States v. Pacheco-Zepeda*, 234 F.3d 411, 414 (9th Cir. 2000) (*Apprendi* “unmistakably carved out an exception for ‘prior convictions’ that specifically preserved the holding of *Almendarez-Torres*”); *see also Alleyne v. United States*, 133 S. Ct. 2151, 2160 n.1 (2013) (declining to revisit *Almendarez-Torres*).

AFFIRMED.