

SEP 12 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DORA FAJARDO,

Defendant - Appellant.

No. 07-50515

D.C. No. CR-01-01502-JTM

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, District Judge, Presiding

Submitted September 8, 2008**

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

Dora Fajardo appeals the revocation of her supervised release and the sentence imposed upon revocation. Fajardo contends that the procedures by which

* 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).

her supervised release was revoked are unconstitutional. Fajardo argues that the Supreme Court's decision in *Cunningham v. California*, 549 U.S. 270 (2007), called into question the constitutionality of the revocation procedures, and undermined this court's holding in *United States v. Huerta-Pimental*, 445 F.3d 1220 (9th Cir.), *cert. denied*, 127 S. Ct. 545 (2006).

As Fajardo concedes in her reply brief, her contention is foreclosed by this court's recent decision in *United States v. Santana*, 526 F.3d 1257, 1262 (9th Cir. 2008) ("nothing in *Cunningham* calls into question the continuing authority of *Huerta-Pimental*. *Cunningham* does not affect the validity of § 3583's procedure for revocation of supervised release.")

AFFIRMED.