

JAN 24 2008

CATHY A. CATTERSON, 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NOT FOR PUBLICATION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.

ARTURO VASQUEZ-FALCON,

Defendant - Appellant.

No. 05-50522

D.C. No. CR-04-00159-DOC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted January 14, 2008**

Before: HALL, O'SCANLAIN, and PAEZ, Circuit Judges.

Arturo Vasquez-Falcon appeals from the 70-month sentence, and the terms of his supervised release, imposed following his guilty-plea conviction for being

* 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).

an illegal alien found in the United States following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Vasquez-Falcon first contends that 8 U.S.C. § 1326(b) is unconstitutional because *Almendarez Torres v. United States*, 523 U.S. 224 (1998), is no longer good law. This contention is foreclosed by our holding in *United States v. Covian-Sandoval*, 462 F.3d 1090, 1096-97 (9th Cir. 2006).

Vasquez-Falcon also contends that the condition of release requiring him to “participate in outpatient substance abuse treatment and submit to drug and alcohol testing as instructed by the probation officer,” is impermissible under our decision in *United States v. Stephens*, 424 F.3d 876 (9th Cir. 2005). We need not construe this condition for purposes of this appeal because there was no plain error. *See United States v. Maciel-Vasquez*, 458 F.3d 994, 996 (9th Cir. 2006).

Finally, Vasquez-Falcon contends that certain special conditions of his supervised release are not reasonably related to any enumerated statutory purpose. Vasquez-Falcon has not carried his burden of persuasion with respect to demonstrating prejudice, and therefore his contention fails. *See United States v. Olano*, 507 U.S. 725, 732-34 (1993).

AFFIRMED.