

MAY 23 2008

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NOT FOR PUBLICATION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.

REMIGIO VALDEZ-BRITO,

Defendant - Appellant.

No. 04-50568

D.C. No. CR-03-03073-JAH

MEMORANDUM*

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

Submitted May 20, 2008**

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Remigio Valdez-Brito appeals from his guilty-plea conviction and 46-month sentence for being a deported alien found in the United States, in violation of

* 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).

8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Valdez-Brito contends that the district court erred by denying his motion to suppress evidence of his unlawful presence in the United States. Because Valdez-Brito pled guilty unconditionally, he waived his right to challenge any non-judicial antecedent ruling. *See United States v. Lopez-Armenta*, 400 F.3d 1173, 1175 (9th Cir. 2005).

Valdez-Brito also contends that the district court erred under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), by enhancing his sentence based on facts not alleged in the indictment, admitted, or proven to a jury beyond a reasonable doubt. We conclude that any *Apprendi* error was harmless. *See United States v. Salazar-Lopez*, 506 F.3d 748, 751-56 (9th Cir. 2007).

AFFIRMED.