

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NOT FOR PUBLICATION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.

NOE BERNAL-PORTILLO,

Defendant - Appellant.

No. 07-10344

D.C. No. CR-00-00294-PMP

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NOE BERNAL-PORTILLO,

Defendant - Appellant.

No. 07-10345

D.C. No. CR-06-00323-PMP

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted May 20, 2008**

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

In these consolidated cases, Noe Bernal-Portillo appeals from the 80-month sentence imposed following his guilty-plea conviction for illegal reentry following deportation, in violation of 8 U.S.C. § 1326.¹ We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Bernal-Portillo contends that his sentence enhancement, based on a prior conviction that was not alleged in the indictment, proved beyond a reasonable doubt, or admitted during plea proceedings, is unconstitutional. He further contends that, under the doctrine of constitutional avoidance, § 1326 should be construed to require proof beyond a reasonable doubt of a prior conviction used to enhance a sentence. As Bernal-Portillo concedes, these contentions are foreclosed. *See Almendarez-Torres v. United States*, 523 U.S. 224, 243-47 (1998); *United States v. Grisel*, 488 F.3d 844, 846-47 (9th Cir. 2007) (en banc); *United States v. Zepeda-Martinez*, 470 F.3d 909, 912 (9th Cir. 2006).

AFFIRMED.

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

¹Bernal-Portillo does not raise any contentions regarding the 24-month sentence imposed in district court case CR-00-00294-PMP following revocation of supervised release.