

SEP 27 2007

**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NOT FOR PUBLICATION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.

RUPERTO DELGADO-RODRIGUEZ,

Defendant - Appellant.

No. 06-10754

D.C. No. CR-06-00124-KJD

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted September 24, 2007**

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges

Ruperto Delgado-Rodriguez appeals the sentence imposed following his guilty plea to unlawful reentry after deportation, in violation of 8 U.S.C. § 1326. He contends that in violation of the Fifth and Sixth Amendments, his sentence was

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

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

enhanced with a prior conviction not alleged in the indictment, proved beyond a reasonable doubt, or admitted during plea proceedings. He also 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 Delgado-Rodriguez acknowledges, these contentions are foreclosed. *See United States v. Grisel*, 488 F.3d 844, 846-47 (9th Cir. 2007) (en banc); *United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005), *cert. denied*, 547 U.S. 1114 (2006). We therefore affirm the sentence.

AFFIRMED.