

**FILED**

**NOV 26 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**NOT FOR PUBLICATION**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.

ALVARO GOANA-CERVANTES,

Defendant - Appellant.

No. 07-10155

D.C. No. CR-06-00162-1-ECR

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Edward C. Reed Jr., District Judge, Presiding

Submitted November 13, 2007\*\*

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

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\* 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).

Alvaro Goana-Cervantes appeals from his 41-month sentence for illegal reentry by a deported alien, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

To the extent Goana-Cervantes contends that his sentence should not have exceeded two years because his prior conviction did not satisfy the conditions of 8 U.S.C. § 1326(b), we disagree. Goana-Cervantes's uncontested prior conviction for felony statutory rape was sufficient to enhance his sentence beyond two years. *See* 8 U.S.C. § 1326(b); *Apprendi v. New Jersey*, 530 U.S. 466, 489 (2000).

To the extent Goana-Cervantes contends that the Sentencing Commission exceeded its authority by altering the meaning of 8 U.S.C. § 1326, we conclude there was no plain error. *See United States v. Pimentel-Flores*, 339 F.3d 959, 967 (9th Cir. 2003). To the extent Goana-Cervantes otherwise contends that his sentence was impermissible, we likewise conclude there was no plain error. *See id.*

**AFFIRMED.**