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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JOSE LUIS RIOS-FLORES,</p> <p>Defendant - Appellant.</p>
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No. 08-50216

D.C. No. 3:06-cr-02303-WQH-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
William Q. Hayes, District Judge, Presiding

Submitted January 13, 2009\*\*

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Jose Luis Rios-Flores appeals from the 10-month sentence imposed following revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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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).

Rios-Flores contends that the scheme of supervised release revocation violates the rule of *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). He acknowledges the contrary authority of *United States v. Huerta-Pimental*, 445 F.3d 1220 (9th Cir. 2006), and *United States v. Santana*, 526 F.3d 1257 (9th Cir. 2008), but contends that these cases conflict with *Cunningham v. California*, 127 S. Ct. 856 (2007), and *Butler v. Curry*, 528 F.3d 624 (9th Cir. 2008). We reject these contentions. *See Santana*, 526 F.3d at 1262 (holding that *Cunningham* does not impact the validity of 18 U.S.C. § 3583's procedure for revocation of supervised release); *see also Butler*, 528 F.3d at 635 (analyzing *Cunningham* in the context of an initial sentencing, not in the context of supervised release).

**AFFIRMED.**