

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 01 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARIO VALENCIA-OCHOA,

Defendant-Appellant.

No. 16-50007

D.C. No. 3:14-cr-02345-CAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Cathy Ann Bencivengo, District Judge, Presiding

Submitted July 26, 2016**

Before: SCHROEDER, CANBY, and CALLAHAN, Circuit Judges.

Mario Valencia-Ochoa appeals from the district court's judgment and challenges the revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

Valencia-Ochoa contends that 18 U.S.C. § 3583(e)(3), which provides that a district court may revoke supervised release and impose a term of imprisonment upon finding by a preponderance of the evidence that the defendant violated a condition of supervised release, is unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). As Valencia-Ochoa concedes, this claim is foreclosed. *See United States v. Santana*, 526 F.3d 1257, 1262 (9th Cir. 2008).

AFFIRMED.