

**FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

No. 00-10346

14670

COUNSEL

Atmore L. Baggot, Apache Junction, Arizona, for the
defendant-appellant.

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intercept, the provisions of the Electronic Communications Privacy Act of 1986, which prohibit warrantless interceptions of electronic transmissions, are inapplicable.

Moreover, the information he seeks to suppress, his identity and the fact of his presence within the United States, cannot be suppressed. INS v. Lopez-Mendoza, 468 U.S. 1032, 1039 (1984). Therefore, the district court correctly denied the motions to suppress and for an evidentiary hearing.

2. The Sentencing Enhancement

At sentencing, Ramirez-Garcia was given a 16-level enhancement and sentenced to five years, based on a PSR that reported his 1990 conviction for forcible rape (as well as one

range for aliens with prior convictions. The fact of a prior conviction is relevant and properly considered in calculating offense level. United States v. Lara-Aceves, 183 F.3d 1007, 1013-14 (9th Cir. 1999), overruled on other grounds by United States v. Rivera-Sanchez, 247 F.3d 905 (9th Cir. 2001) (en banc); United States v. Blanco-Gallegos, 188 F.3d 1072, 1076 (9th Cir. 1999).

3. The Apprendi Issue

Defendant argues that his sentence is illegal because the fact of his pre-removal conviction must be proved beyond a reasonable doubt and it was not. The government points out that this argument presumes that Apprendi overrules Almendarez-Torres v. United States, 523 U.S. 224 (1998), which expressly provides that prior convictions may be United States v. PanchncoZepedas

, 348 F.3d411,d413,

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