

APR 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RUBEN BAZA-MARTINEZ,

Defendant - Appellant.

No. 07-10438

D.C. No. CR-04-01640-JMR

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
John M. Roll, District Judge, Presiding

Submitted April 13, 2009\*\*

Before: GRABER, GOULD, and BEA, Circuit Judges.

Ruben Baza-Martinez appeals from the 63-month sentence imposed, upon remand, following his guilty-plea conviction for illegal re-entry after deportation,

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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).

in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Baza-Martinez contends that, at resentencing, the district court should not have evaluated whether his prior conviction qualified as a crime of violence under the Guidelines because we had already decided that issue. This contention fails. *See United States v. Garcia-Beltran*, 443 F.3d 1126, 1129-31 (9th Cir. 2006).

Baza-Martinez also contends that the district court erred by allowing the government to present new evidence at resentencing. This contention fails. *See United States v. Matthews*, 278 F.3d 880, 885-89 (9th Cir. 2002) (en banc).

Baza-Martinez next contends that the new evidence presented at resentencing did not clearly and unequivocally establish that his prior conviction was based on qualifying conduct. We disagree. *See United States v. Smith*, 390 F.3d 661, 664-66 (9th Cir. 2004).

Finally, Baza-Martinez contends that the district court erred by denying his request for a third point reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(b). We conclude that this contention fails under *United States v. Medina-Beltran*, 542 F.3d 729, 731 (9th Cir. 2008).

**AFFIRMED.**