

JUL 22 2010

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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NOT FOR PUBLICATION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.

JOSE RICO-CARRILLO,

Defendant - Appellant.

No. 09-50355

D.C. No. 3:08-cr-00363-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Jose Rico-Carrillo appeals from the 57-month sentence imposed following his guilty-plea conviction for attempted entry after deportation, in violation of 8 U.S.C. § 1326, and making a false claim to United States citizenship, in violation of 18 U.S.C. § 911. 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 9th Cir. R. 36-3.

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

Rico-Carrillo contends that the district court procedurally erred at sentencing by failing to explicitly address his argument that the 16-level crime of violence enhancement under the Sentencing Guidelines reflects unsound policy by the Sentencing Commission because it is not tied by empirical research to any factor relevant to sentencing. The record reflects that the district court considered Rico-Carrillo's arguments and did not procedurally err. *See United States v. Carty*, 520 F.3d 984, 992-93 (9th Cir. 2008) (en banc).

AFFIRMED.