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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NOT FOR PUBLICATION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>JOEL VALDEZ-CASTRO,</p> <p>Defendant - Appellant.</p>
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No. 09-50101

D.C. No. 3:07-CR-02668-RTB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted June 29, 2010**

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

Joel Valdez-Castro appeals from the 51-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. 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).

Valdez-Castro contends that the district court erred by determining that his prior conviction for assault with a firearm, in violation of California Penal Code § 245(a)(2), constituted a crime of violence under U.S.S.G. § 2L1.2, because section 245(a)(2) does not contain the requisite intent or use of force. These contentions are foreclosed. *See United States v. Grajeda*, 581 F.3d 1186, 1191-97 (9th Cir. 2009); *see also United States v. Heron-Salinas*, 566 F.3d 898, 899 (9th Cir. 2009).

Valdez-Castro also contends that his sentence is substantively unreasonable. The district court did not procedurally err and, in light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors, Valdez-Castro's sentence is substantively reasonable. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

AFFIRMED.