

APR 21 2011

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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NOT FOR PUBLICATION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.

ERIK MERCADO-ARECHIGA,

Defendant - Appellant.

No. 09-50602

D.C. No. 3:09-cr-00248-L-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
M. James Lorenz, Senior District Judge, Presiding

Submitted April 15, 2011**
Pasadena, California

Before: KOZINSKI, Chief Judge, D.W. NELSON and BYBEE, Circuit Judges.

The district court did not err in concluding that Mercado-Arechiga’s prior burglary conviction under California Penal Code § 459 was a crime of violence as defined by 18 U.S.C. § 16, which renders an individual statutorily ineligible for

* 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).

voluntary departure. *See United States v. Becker*, 919 F.2d 568, 573 (9th Cir. 1990). *Becker* remains good law and we are bound by it. Thus, because Mercado-Arechiga was ineligible for voluntary departure, he did not suffer prejudice from the IJs' failure to advise him of his eligibility to seek such relief.

AFFIRMED.