

APR 28 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NOT FOR PUBLICATION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.

ANAEL VASQUEZ-DIAZ,

Defendant - Appellant.

No. 10-50155

D.C. No. 3:08-cr-01011-JM-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, Senior District Judge, Presiding

Submitted April 20, 2011**

Before: RYMER, THOMAS and PAEZ, Circuit Judges.

Anael Vasquez-Diaz appeals the sentence imposed following his guilty plea to attempted entry after deportation in violation of 8 U.S.C. § 1326. Vasquez-Diaz contends that the district court erred in determining that his prior conviction 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).

making criminal threats in violation of Calif. Penal Code § 422 was a crime of violence warranting a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A). As Vasquez-Diaz concedes, this contention is foreclosed by *United States v. Villavicencio-Burrue*, 608 F.3d 556 (9th Cir. 2010), which held that a § 422 violation is categorically a crime of violence.

AFFIRMED.