

SEP 29 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NOT FOR PUBLICATION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.

JUAN CARLOS CHAVEZ GOMEZ,

Defendant - Appellant.

No. 09-50246

D.C. No. 2:09-cr-00013-JFW-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted September 27, 2011 **

Before: HAWKINS, SILVERMAN and W. FLETCHER, Circuit Judges.

Juan Carlos Chavez Gomez appeals the sentence imposed following his guilty plea to being an illegal 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).

Gomez 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. Gomez concedes, however, that this contention is 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).

As Gomez further concedes, his contentions concerning *Almendarez–Torres* are also foreclosed. *See Grajeda*, 581 F.3d at 1197 (holding that *Almendarez–Torres* is binding unless it is expressly overruled by the Supreme Court).

AFFIRMED.