

DEC 06 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CARLOS ALBERTO REZABALA, a.k.a.
Carlos Alberto Vasquez,

Defendant - Appellant.

No. 12-50307

D.C. No. 2:09-cr-00679-GHK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. King, Chief Judge, Presiding

Submitted November 19, 2013**

Before: CANBY, TROTT, and THOMAS, Circuit Judges.

Carlos Alberto Rezabala’s motion to lift the stay of appellate proceedings ordered by this court on September 30, 2013, is granted. Rezabala appeals from the district court’s judgment and challenges the sentence imposed following his

* 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).

jury-trial conviction for health care fraud, in violation of 18 U.S.C. § 1347. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Rezabala contends that the district court violated his Sixth Amendment rights when it applied a 14-level upward adjustment under U.S.S.G. § 2B1.1(b)(1)(H) without submitting the issue to a jury for a finding of loss beyond a reasonable doubt. He also argues that this error was not harmless because the evidence in the record permits a reasonable doubt regarding the amount of loss that his offense caused. This claim fails. *See United States v. Hickey*, 580 F.3d 922, 932 (9th Cir. 2009) (“[T]he Sixth Amendment does not require that the loss be proved to a jury beyond a reasonable doubt.”).

AFFIRMED.