

APR 11 2014

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NOT FOR PUBLICATION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.

JACOBO ZETINA-SANDOVAL,

Defendant - Appellant.

No. 13-10373

D.C. No. 4:13-cr-00398-CKJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Cindy K. Jorgenson, District Judge, Presiding

Submitted April 7, 2014**

Before: TASHIMA, GRABER, and IKUTA, Circuit Judges.

Jacobo Zetina-Sandoval appeals from the district court's judgment and challenges the 24-month sentence imposed following his guilty-plea conviction for reentry after deportation, 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).

Zetina-Sandoval contends that the district court erred by applying a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii) because his conviction for making criminal threats, in violation of section 422 of the California Penal Code, is not a categorical crime of violence. This contention is foreclosed by *United States v. Villavicencio-Burrue*, 608 F.3d 556, 563 (9th Cir. 2010). Zetina-Sandoval's argument that we are not bound by *Villavicencio-Burrue* is without merit. *See Newdow v. Lefevre*, 598 F.3d 638, 644 (9th Cir. 2010) (a three-judge panel is bound by circuit precedent unless it is "clearly irreconcilable" with intervening higher authority).

AFFIRMED.