

OCT 19 2015

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NOT FOR PUBLICATION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.

DANIEL REYES-ZARATE,

Defendant - Appellant.

No. 14-50450

D.C. No. 3:13-cr-04121-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted October 14, 2015**

Before: SILVERMAN, BYBEE, and WATFORD, Circuit Judges.

Daniel Reyes-Zarate appeals from the district court's judgment and challenges the 72-month sentence imposed following his guilty-plea conviction for being a removed 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).

Reyes-Zarate contends that the district court erred in applying a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii) because his prior conviction under California Penal Code § 211 is not a crime of violence. Reyes-Zarate's argument is foreclosed. *See United States v. Flores-Mejia*, 687 F.3d 1213, 1216 (9th Cir. 2012) (a conviction under California Penal Code § 211 is a categorical crime of violence); *see also Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc) (three-judge panel is bound by circuit precedent unless that precedent is "clearly irreconcilable" with intervening higher authority).

AFFIRMED.