

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 24 2016

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SERGIO RICARDO ORTIZ-LUCATERO,

Defendant-Appellant.

No. 15-50127

D.C. No. 3:14-cr-02212-H-1

ORDER\*

Appeal from the United States District Court  
for the Southern District of California  
Marilyn L. Huff, District Judge, Presiding

Argued and Submitted May 4, 2016  
Pasadena, California

Before: FISHER, M. SMITH, and NGUYEN, Circuit Judges.

The Joint Motion to Summarily Reverse and Remand is GRANTED. We remand for resentencing on a closed record as to the conviction under California Health and Safety Code § 11352(a), but otherwise on an open record. *See United States v. Espinoza-Morales*, 621 F.3d 1141, 1152 (9th Cir. 2010) (remanding on closed record where government failed to show that prior convictions qualified as

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

crimes of violence and did not identify any additional materials it could offer at resentencing); *United States v. Matthews*, 278 F.3d 880, 885-90 (9th Cir. 2002) (en banc).

**SENTENCE VACATED; REMANDED.**