

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 11 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 16-10105

Plaintiff-Appellee,

D.C. No. 4:15-cr-00984-RM

v.

MEMORANDUM\*

GUSTAVO DAVALOS TRUEBA,

Defendant-Appellant.

Appeal from the United States District Court  
for the District of Arizona  
Rosemary Marquez, District Judge, Presiding

Submitted May 8, 2017\*\*

Before: REINHARDT, LEAVY, and NGUYEN, Circuit Judges.

Gustavo Davalos Trueba appeals from the district court's judgment and challenges the 38-month sentence imposed following his guilty-plea conviction for reentry of a removed alien, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Davalos Trueba contends that the district court erred by enhancing his sentence on the basis that his prior conviction of willful infliction of corporal injury on a spouse or cohabitant under California Penal Code § 273.5 was a “crime of violence” under U.S.S.G. § 2L1.2(b)(1)(A)(ii) (2014). This claim is foreclosed by *United States v. Laurico-Yeno*, 590 F.3d 818, 823 (9th Cir. 2010). Contrary to Davalos Treuba’s claim, *Johnson v. United States*, 135 S. Ct. 2551 (2015) is not “clearly irreconcilable” with this precedent. *See 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).

Davalos Trueba also contends that the district court erred in applying the enhancement because his conviction under section 273.5 does not qualify as a felony. This claim is without merit. A violation of section 273.5 is punishable by up to four years of imprisonment. *See Cal. Penal Code § 273.5(a)*. It thus meets the definition of “felony.” *See U.S.S.G. § 2L1.2 cmt. n.2* (2014) (“‘[F]elony’ means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.”).

**AFFIRMED.**