

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 29 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

OMAR DOMINGUEZ-VALENCIA,

Defendant-Appellant.

No. 15-50531

D.C. No. 3:15-cr-02064-BTM

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Barry Ted Moskowitz, Chief Judge, Presiding

Submitted September 26, 2017**

Before: SILVERMAN, TALLMAN, and N.R. SMITH, Circuit Judges.

Omar Dominguez-Valencia appeals from the district court's judgment and challenges his guilty-plea conviction for attempted 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.

* 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).

Dominguez-Valencia contends that his underlying removal order, which was based on his conviction for burglary in violation of California Penal Code § 459, is invalid in light of this court's decision in *Dimaya v. Lynch*, 803 F.3d 1110 (9th Cir. 2015), *cert. granted*, 137 S. Ct. 31 (2016). Regardless of the merits of this contention, by entering an unconditional guilty plea, Dominguez-Valencia waived his right to challenge the validity of the underlying removal order. *See Tollett v. Henderson*, 411 U.S. 258, 267 (1973).

Dominguez-Valencia's unopposed motion to take judicial notice is granted.

AFFIRMED.