NOT FOR PUBLICATION

FILED

OCT 29 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. MOISES ZAMORA, Defendant - Appellant.	No. 25-4625 D.C. No. 1:23-cr-00020-SPW-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, Senior District Judge, Presiding

Argued and Submitted October 15, 2026
Missoula, Montana

Before: TALLMAN, BRESS, and FORREST, Circuit Judges.

Following a jury trial, Moises Zamora appeals his conviction for possessing over 500 grams of methamphetamine with the intent to distribute, in violation of 18 U.S.C. § 841(a)(1). He argues the district court erred in three ways: by denying his two pretrial motions to suppress, denying his motion for judgment of acquittal, and improperly calculating his sentence. Finding no error, we affirm.

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

1. Zamora argues that he and the vehicle he was operating were illegally seized without reasonable suspicion when Yellowstone County Sheriff's Sergeant Harrison Gillen pulled his police cruiser closely behind Zamora's parked car at a gas station outside of Billings, Montana. He argues that all evidence subsequently discovered in his car is fruit of the poisonous tree that must be suppressed. We review a district court's denial of a motion to suppress and its determination as to "[w]hether an encounter between a defendant and an officer constitutes a seizure" de novo. *United States v. Smith*, 633 F.3d 889, 892 (9th Cir. 2011).

"The Fourth Amendment allows government officials to conduct an investigatory stop of a vehicle only upon a showing of reasonable suspicion: 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *United States v. Thomas*, 211 F.3d 1186, 1189 (9th Cir. 2000) (quoting *United States v. Cortez*, 449 U.S. 411, 417–18 (1981)). A "seizure" within the meaning of the Fourth Amendment can occur through either "physical force" or a "show of authority" that restrains a person's liberty. *Torres v. Madrid*, 592 U.S. 306, 311 (2021) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)). The parties agree that the seizure analysis here falls under the "show of authority" rubric, as Sergeant Gillen did not make physical contact with Zamora at the gas station before Zamora led him on a high-speed chase.

A seizure by "show of authority" occurs (1) when "the police conduct would

have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter," *Florida v. Bostick*, 501 U.S. 429, 439 (1991), and (2) upon the person's "actual submission" to the authority, *Brendlin v. California*, 551 U.S. 249, 254 (2007). A suspect "who flees upon a show of authority is not seized until he or she is physically apprehended." *United States v. Santamaria-Hernandez*, 968 F.2d 980, 983 (9th Cir. 1992) (citing *California v. Hodari D.*, 499 U.S. 621, 625–29 (1991)).

Here, assuming without deciding that Sergeant Gillen's conduct at the gas station would have communicated to a reasonable person that he was not free to terminate the encounter, there is no dispute that Zamora refused to submit to that show of authority. Rather, before Sergeant Gillen could exit his cruiser, Zamora maneuvered his car around the police cruiser and led him on a high-speed chase, before eventually reaching a dead end in the road and surrendering. Only then was Zamora seized, at which point Sergeant Gillen had developed reasonable suspicion to initiate an investigatory stop and probable cause to arrest Zamora. *See Whren v. United States*, 517 U.S. 806, 810 (1996) ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."). Accordingly, the district court did not err in

denying Zamora's motions to suppress.[1]

2. Zamora next argues there was insufficient evidence to convict him under § 841(a)(1), and that the district court erred in denying his motion for judgment of acquittal. We review de novo the district court's denial of a motion for judgment of acquittal. *United States v. Aubrey*, 800 F.3d 1115, 1124 (9th Cir. 2015). We have carefully reviewed the record—including the testimony of the deputies and Zamora's passenger—and we are satisfied that the evidence, viewed in the light most favorable to the government, was sufficient for a rational jury to find Zamora guilty beyond a reasonable doubt. *See United States v. Solorio*, 669 F.3d 943, 954–56 (9th Cir. 2012); *United States v. Nevils*, 598 F.3d 1158, 1163–64 (9th Cir. 2010) (en banc). The evidence was likewise sufficient for the jury to conclude that the drugs sent to the laboratory for testing were the same drugs removed from a hidden area in Zamora's vehicle.

3. Zamora argues the district court erred at sentencing by not applying a downward sentencing adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1. "Whether or not a defendant has accepted responsibility for his crime is a factual determination" that we review for clear error. *United States v. Gonzalez*, 897

[1] Because we hold that there was no Fourth Amendment seizure at the gas station, we do not decide whether Sergeant Gillen had reasonable suspicion at that point. For the same reason, we do not address whether Zamora's flight would nonetheless satisfy the attenuation exception to the exclusionary rule had the gas station encounter been deemed an illegal seizure.

F.2d 1018, 1019 (9th Cir. 1990). Here, Zamora not only went to trial and held the government to its burden, but he also maintained his objections to the offense conduct through sentencing. His pre-sentencing "Acceptance of Responsibility Letter," which does not so much as mention the offense conduct, is not sufficient to turn this into one of the "unusual cases in which a defendant is entitled to an acceptance of responsibility reduction despite having pleaded not guilty." *United States v. McKinney*, 15 F.3d 849, 852 (9th Cir. 1994).

4. Nor did the district court err by imposing the two-level enhancement under U.S.S.G. § 3C1.2, which applies when a "defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer." "A district court's determination of whether a defendant's conduct constituted reckless endangerment during flight is a factual finding that we review for clear error." *United States v. Young*, 33 F.3d 31, 32 (9th Cir. 1994). The district court permissibly found that Zamora's decision to lead Sergeant Gillen on a high-speed vehicle pursuit on snowy and icy roads, where he at one point made a blind pass of a semi-truck, justified the imposition of the enhancement. *See United States v. Brewster*, 116 F.4th 1051, 1058–59 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 1148 (2025); *United States v. Reyes-Oseguera*, 106 F.3d 1481, 1483–84 (9th Cir. 1997).

5. Whether the district court erred in adding one point to Zamora's

criminal history calculation for his 2018 Colorado shoplifting conviction in the Thornton Municipal Court is uncertain. We review a district court's sentencing calculations de novo. *United States v. Cruz-Gramajo*, 570 F.3d 1162, 1174 (9th Cir. 2009). On this record, it is unclear whether that conviction should have been excluded from the calculation pursuant to U.S.S.G. § 4A1.2(c)(2). Nevertheless, even if the district court erred in this respect—which we do not decide—it was harmless. Without the shoplifting conviction, Zamora's sentencing guidelines range would have remained the same, as his criminal history score would have gone from 19 to 18, keeping him well within Criminal History Category VI. *See* U.S.S.G. ch. 5, pt. A (Sentencing Table); *see also Cruz-Gramajo*, 570 F.3d at 1174 (explaining that an error calculating the criminal history score is harmless if it results in the same guidelines range).

AFFIRMED.