

APPENDIX

FILED**NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SEP 18 2018

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JUAN LOPEZ-HERNANDEZ, a.k.a. Juan
Hilario Lopez-Hernandez,

Defendant-Appellant.

No. 17-50189

D.C. No. 3:16-cr-01415-CAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Cathy Ann Bencivengo, District Judge, Presiding

Submitted September 12, 2018**

Before: LEAVY, HAWKINS, and TALLMAN, Circuit Judges.

Juan Lopez-Hernandez appeals from the district court's judgment and challenges his 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.

Lopez-Hernandez contends that the district court erred in denying his motion

* 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).

to dismiss the information under 8 U.S.C. § 1326(d). We review de novo. *See United States v. Moriel-Luna*, 585 F.3d 1191, 1196 (9th Cir. 2009). Lopez-Hernandez argues that his conviction under California Penal Code § 243(c)(2), which formed the basis of his initial removal in 2002, is not a crime of violence. This argument is foreclosed. *See United States v. Colon-Arreola*, 753 F.3d 841, 844-45 (9th Cir. 2014) (holding that a conviction under California Penal Code § 243(c)(2) is a categorical crime of violence under U.S.S.G. § 2L1.2); *see also United States v. Narvaez-Gomez*, 489 F.3d 970, 976 (9th Cir. 2007) (definitions of crime of violence in 18 U.S.C. § 16(a) and U.S.S.G. § 2L1.2 are “identical” so cases interpreting one provision are applicable to other provision). Contrary to Lopez-Hernandez’s contention, *Colon-Arreola* is not “clearly irreconcilable” with *Mathis v. United States*, 136 S. Ct. 2243 (2016). *See Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc).

In light of this disposition, we do not reach the government’s arguments regarding Lopez-Hernandez’s 2014 expedited removal order.

The government’s motion for judicial notice is denied.

AFFIRMED.

FILED

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JAN 18 2019

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No. 17-50189

D.C. No. 3:16-cr-01415-CAB
Southern District of California,
San Diego

ORDER

Before: LEAVY, HAWKINS, and TALLMAN, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Lopez-Hernandez's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 36) are denied.