

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 28 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSE LUIS GUEVARA, AKA Andres
Fierro Cantu, AKA Jose Andreas Lopez,
AKA Jose Lopez, AKA Jose Andreas Ruiz,

Defendant-Appellant.

No. 14-50024

D.C. No.

2:13-cr-00639-ABC-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, District Judge, Presiding

Submitted December 27, 2017**

Before: SILVERMAN, BYBEE, and WATFORD, Circuit Judges.

Jose Luis Guevara appeals from the district court's judgment and challenges the 50-month custodial sentence and three-year term of supervised release imposed following his guilty-plea conviction for being an illegal alien found in the United

* 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).

States following deportation, in violation of 8 U.S.C. § 1326.

On October 19, 2015, we issued an order affirming the judgment. *United States v. Guevara*, 619 Fed. Appx. 648 (9th Cir. 2015) (unpublished). We rejected Guevara’s argument that the district court erred in determining that California Health & Safety Code § 11351 is divisible and subject to the modified categorical approach, noting that Guevara’s argument was foreclosed by this court’s decision in *United States v. Torre-Jiminez*, 771 F.3d 1163, 1167 (9th Cir. 2014).

In January 2016, Guevara filed a petition for writ of certiorari, which the Supreme Court granted. The Supreme Court vacated the judgment and remanded to this court “for further consideration in light of” the Court’s recent decision in *Mathis v. United States*, 136 S. Ct. 2243 (2016). *Guevara v. United States*, 136 S. Ct. 2542 (2016).

On remand, we invited the parties to submit additional briefing addressing the Supreme Court’s decision in *Mathis* and this court’s decision in *United States v. Martinez-Lopez*, 864 F.3d 1034 (9th Cir. 2017) (en banc). After the parties submitted their briefing, a panel of this court held in *United States v. Murillo-Alvarado*, 876 F.3d 1022 (9th Cir. 2017) that California Health and Safety Code § 11351 is divisible and subject to the modified categorical approach.

This court's decision in *Murillo-Alvarado* is controlling. *See In re Zermeno-Gomez*, 868 F.3d 1048, 1052 (9th Cir. 2017). Because Guevara's challenge is foreclosed by *Murillo-Alvarado*, the judgment is affirmed.

AFFIRMED.