

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-50209

Plaintiff-Appellee,

D.C. No. 3:16-cr-02622-LAB

v.

MEMORANDUM*

FRANCISCO HEREDIA-SILVA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted August 15, 2018**

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Francisco Heredia-Silva appeals his bench-trial conviction for being a removed alien found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Heredia-Silva contends that his prior conviction for making terrorist threats

* 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).

under California Penal Code § 422 is not a “crime of violence” for purposes of 18 U.S.C. § 16(a). He argues, therefore, that the district court erred by denying his motion to dismiss the information under 8 U.S.C. § 1326(d). As Heredia-Silva concedes, this argument is foreclosed. *See Arellano Hernandez v. Lynch*, 831 F.3d 1127, 1132 (9th Cir. 2016) (“[A]pplying our precedent, section 422 is categorically a crime of violence.”). Heredia-Silva’s request that we sua sponte call for en banc review of this precedent is denied.

AFFIRMED.