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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JESUS MARIO SERRANO-PEREZ,

Defendant.

CASE NO. 15CR0286/16CV1716-LAB

**ORDER DENYING MOTION TO
VACATE SENTENCE**

Jesus Mario Serrano-Perez pled guilty to illegally reentering the United States in violation of 8 U.S.C. § 1326, and was sentenced to 72 months in September 2015. His sentence was enhanced because he had previously been convicted of a “crime of violence.” See United States Sentencing Guidelines (USSG), § 2L1.2, n. 1(B)(iii) (defining the term). Serrano-Perez waived his right to appeal in exchange for sentencing concessions from the government, so his sentence became final when the Court signed the Judgment on September 14, 2015.

Serrano-Perez has now filed a motion under 28 U.S.C. § 2255 to vacate the sentence. He contends that the Supreme Court’s recent ruling in *Johnson v. United States*, ___ U.S. ___, 135 S. Ct. 2551 (2015) requires that the sentence be vacated. In *Johnson*, the Court held that part of the Armed Career Criminal Act, 18 U.S.C. § 924(e) – in particular, language in the so-called “residual clause” that authorized a sentence enhancement based on a finding that a defendant’s prior conviction “present[ed] a serious potential risk of

1 physical injury to another” – was unconstitutionally vague and couldn’t be relied on to
2 enhance a sentence. But the holding in *Johnson* doesn’t implicate the definition of “crime
3 of violence” as used in section 2L1.2 of the Sentencing Guidelines, which does not include
4 the residual clause language. Instead, section 2L1.2’s definition authorizes a sentence
5 enhancement when the defendant has either been convicted of certain enumerated offenses
6 or of any offense that “has as an element the use, attempted use, or threatened use of
7 physical force against the person of another.” Enhancing a defendant’s sentence based on
8 his prior conviction is proper when the elements of the prior conviction match the generic
9 definition of a “crime of violence” under federal law. *Taylor v. United States*, 495 U.S. 575,
10 602 (1990).

11 Before he was sentenced in this case, Serrano-Perez was convicted of inflicting
12 corporal injury on a spouse in violation of California Penal Code § 273.5(a), PSR¹ at 7. The
13 elements of that crime categorically match the elements of the crime of violence definition
14 under section 2L1.2. *Banuelos-Ayon v. Holder*, 611 F.3d 1080, 1083-84 (9th Cir. 2010). See
15 also *United States v. Ayala-Nicanor*, 659 F.3d 744, 752 (9th Cir. 2011) (holding that § 273.5
16 is a categorical crime of violence under the force clause of the illegal reentry guidelines,
17 § 2L1.2); *United States v. Laurico-Yeno*, 590 F.3d 818, 823 (9th Cir. 2010) (same).

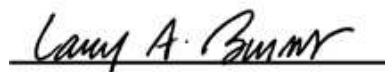
18 *Johnson* is inapposite to Serrano-Perez’s case – the Court didn’t rely on any version
19 of any “residual clause” in imposing his sentence. His motion is **DENIED**.

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21 **IT IS SO ORDERED.**

22 DATED: October 27, 2016

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HONORABLE LARRY ALAN BURNS
United States District Judge

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¹ “PSR refers to the Presentence Report filed in Serrano-Perez’s case on May 26, 2015.