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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JESUS GONZALEZ-MENDOZA,</p> <p>Defendant - Appellant.</p>
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No. 09-50290

D.C. No. 3:08-cr-02523-WQH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Jesus Gonzalez-Mendoza appeals from the 60-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291 and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Gonzalez-Mendoza contends that the district court procedurally erred by failing to adequately explain the sentence and by not responding to his non-frivolous arguments in mitigation. The record reflects that the district court carefully considered the 18 U.S.C. § 3553(a) sentencing factors, including Gonzalez-Mendoza's arguments in mitigation, before concluding that the circumstances were insufficient to warrant a sentence below the one imposed. The district court did not procedurally err in fashioning the sentence. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

Gonzales-Mendoza also contends that the sentence imposed is substantively unreasonable because the prior aggravated felony conviction used to impose a 16-level enhancement to his base offense level was remote in time, unrelated to the instant offense, and already accounted for in his criminal history score. This argument lacks merit. *Cf. United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1055-56 (9th Cir. 2009); *see also United States v. Garcia-Cardenas*, 555 F.3d 1049, 1050 (9th Cir. 2009) (per curiam). The sentence is substantively reasonable under the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51-52 (2007).

AFFIRMED.