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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NOT FOR PUBLICATION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>GUSTAVO VILLASENOR-BOTELLO,</p> <p>Defendant - Appellant.</p>
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No. 10-30100

D.C. No. 2:09-cr-06044-LRS

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Lonny R. Suko, Chief Judge, Presiding

Submitted February 15, 2011\*\*

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Gustavo Villasenor-Botello appeals from the 76-month sentence imposed following his guilty-plea conviction for being an alien in the United States after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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\* 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).

Villasenor-Botello contends that the sentence imposed was greater than necessary to accomplish the statutory purposes of sentencing. The record reflects that the district court carefully considered the 18 U.S.C. § 3553(a) sentencing factors before concluding that the circumstances were insufficient to warrant a sentence below the one imposed. Villasenor-Botello's sentence in the middle of the Guidelines range is substantively reasonable under the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *see also United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (en banc).

Villasenor-Botello acknowledges that his contention that the district court erroneously imposed a sentence above the statutory maximum is foreclosed, but raises it to preserve the issue for potential future review. *See United States v. Bolanos-Hernandez*, 492 F.3d 1140, 1148 (9th Cir. 2007).

**AFFIRMED.**