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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NOT FOR PUBLICATION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>VICTOR MANUEL LEYVA-CABRERA,</p> <p>Defendant - Appellant.</p>

No. 10-10098

D.C. No. 2:09-cr-01162-DGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Submitted September 27, 2011**

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

Victor Manuel Leyva-Cabrera appeals from the 46-month sentence imposed following his guilty-plea conviction for re-entry of a removed alien, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Leyva-Cabrera contends that the district court erred by failing to consider his

* 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).

request for a downward departure based on cultural assimilation. The record reflects that the district court considered the request but concluded that Leyva-Cabrera's cultural ties to the United States did not justify a downward departure from the Guidelines range. *See United States v. Carty*, 520 F.3d 984, 992-93 (9th Cir. 2008) (en banc).

Leyva-Cabrera also contends that the sentence imposed was greater than necessary to accomplish the statutory purposes of sentencing. The record reflects that the court carefully considered the 18 U.S.C. § 3553(a) sentencing factors, particularly the need to afford adequate deterrence and to protect the public, before concluding that the circumstances were insufficient to warrant a sentence below the advisory Guidelines range. Leyva-Cabrera's sentence at the bottom of the Guidelines range is substantively reasonable under the totality of the circumstances and in light of the sentencing factors set forth in 18 U.S.C. § 3553(a). *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.