

AUG 19 2013

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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NOT FOR PUBLICATION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>MIGUEL NUNEZ-POMPA,</p> <p>Defendant - Appellant.</p>
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No. 12-10034

D.C. No. 4:11-cr-02067-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Ronald S.W. Lew, District Judge, Presiding**

Submitted August 14, 2013***

Before: SCHROEDER, GRABER, and PAEZ, Circuit Judges.

Miguel Nunez-Pompa appeals from the district court’s judgment and challenges the 46-month sentence imposed following his guilty-plea conviction for

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

** The Honorable Ronald S.W. Lew, Senior United States District Judge for the Central District of California, sitting by designation.

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

reentry after deportation, in violation of 8 U.S.C. § 1326. We dismiss.

Nunez-Pompa contends that the district court violated Federal Rule of Criminal Procedure 32(i)(4)(A)(ii) by not permitting him to present letters from his family in mitigation of his sentence. The government contends that this appeal should be dismissed based on a sentencing appeal waiver. We review de novo whether to enforce an appeal waiver. *See United States v. Joyce*, 357 F.3d 921, 922 (9th Cir. 2004). This appeal falls within the scope of the appeal waiver, which covered any sentencing challenge. *See id.* (“A defendant’s waiver of his appellate rights is enforceable if the language of the waiver encompasses his right to appeal on the grounds raised, and if the waiver was knowingly and voluntarily made.”). Contrary to Nunez-Pompa’s contention, because the waiver here unambiguously applies to the claim raised on appeal, *United States v. Petty*, 80 F.3d 1384, 1387 (9th Cir. 1996), does not compel a different result. Accordingly, we dismiss this appeal based on the valid appeal waiver.

DISMISSED.