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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NOT FOR PUBLICATION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 style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>VICTOR VEGA-SOTO,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 12-50271

D.C. No. 3:12-cr-00304-MMA

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Michael M. Anello, District Judge, Presiding

Submitted September 24, 2013**

Before: RAWLINSON, N.R. SMITH, and CHRISTEN, Circuit Judges.

Victor Vega-Soto appeals from the district court’s judgment and challenges the 41-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 under 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).

Vega-Soto contends that the district court procedurally erred by failing to respond to his non-frivolous arguments for a below-Guidelines sentence. Because Vega-Soto did not raise this procedural objection at sentencing, we review for plain error. *See United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010). The district court entertained Vega-Soto's mitigating arguments regarding the application of the Guidelines, as reflected in its decision to depart downward five levels, and adequately explained the sentence. *See United States v. Ayala-Nicanor*, 659 F.3d 744, 752-53 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1941 (2012).

Vega-Soto contends that his sentence violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000), but acknowledges that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), remains binding precedent. *See United States v. Estrada-Eliverio*, 583 F.3d 669, 673 (9th Cir. 2009).

AFFIRMED.