

JAN 23 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CESAR JARAMILLO-GARCIA,

Defendant - Appellant.

No. 13-50415

D.C. No. 3:13-cr-02498-LAB

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Larry A. Burns, District Judge, Presiding

Submitted January 21, 2014\*\*

Before: CANBY, SILVERMAN, and PAEZ, Circuit Judges.

Cesar Jaramillo-Garcia appeals from the district court's judgment and challenges the ten-month sentence imposed following his guilty-plea conviction for being a removed 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.

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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).

Jaramillo-Garcia contends that the district court erred by granting only a two-level fast-track departure under U.S.S.G. § 5K3.1, rather than the four-level departure requested by the government. “In analyzing challenges to a court’s upward and downward departures to a specific offense characteristic or other adjustment under Section 5K, we do not evaluate them for procedural correctness, but rather, as part of a sentence’s substantive reasonableness.” *United States v. Ellis*, 641 F.3d 411, 421 (9th Cir. 2011). Contrary to Jaramillo-Garcia’s contention, the district court did not abuse its discretion in imposing his sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The within-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Jaramillo-Garcia’s criminal history and numerous prior deportations. *See id.*

**AFFIRMED.**