

JUL 29 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NOT FOR PUBLICATION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.

ROGELIO MELENDEZ-RODRIGUEZ,  
a.k.a. Jose Gonzalez Gonzalez, a.k.a.  
Rogelio Rodriguez Melendez,

Defendant - Appellant.

No. 13-10549

D.C. No. 2:11-cr-00375-KJM

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Kimberly J. Mueller, District Judge, Presiding

Submitted July 22, 2014\*\*

Before: GOODWIN, CANBY, and CALLAHAN, Circuit Judges.

Rogelio Melendez-Rodriguez appeals from the district court's judgment and challenges the 37-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.

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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).

We have jurisdiction under 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Melendez-Rodriguez contends that his sentence is substantively unreasonable in light of his mitigating circumstances and the age of his prior conviction for possession of a controlled substance for sale, which triggered a 12-level enhancement. The district court did not abuse its discretion in imposing Melendez-Rodriguez's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence at the bottom of the Guidelines range is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Melendez-Rodriguez's criminal history and eight previous deportations. *See id.*

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to 8 U.S.C. § 1326(b)(2). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to section 1326(b) in the judgment of conviction).

**AFFIRMED; REMANDED to correct the judgment.**