

SEP 23 2015

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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## NOT FOR PUBLICATION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.

DEMARKUS DANTE BENAVIDES,

Defendant - Appellant.

No. 14-10512

D.C. No. 4:13-cr-00718-JSW

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Jeffrey S. White, District Judge, Presiding

Submitted September 21, 2015\*\*

Before: REINHARDT, LEAVY, and BERZON, Circuit Judges.

Demarkus Dante Benavides appeals the 87-month sentence imposed following his guilty-plea conviction for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g). Benavides challenges the district court's conclusion that his prior burglary offense is a crime of violence under the residual

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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).

clause of U.S.S.G. § 4B1.2. In light of the government's concession in its August 17, 2015, supplemental brief that *Johnson v. United States*, 135 S. Ct. 2551 (2015), applies to the U.S. Sentencing Guidelines, Benavides' sentence is hereby vacated and the matter is remanded to the district court for resentencing forthwith. The mandate shall issue forthwith.

**VACATED and REMANDED for resentencing.**