

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 17 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JESUS REYES-LIZARRAGA,

Defendant-Appellant.

Nos. 16-10353

16-10354

D.C. Nos. 4:16-cr-00292-CKJ-LAB

4:12-cr-02573-CKJ-LAB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona

Cindy K. Jorgenson, District Judge, Presiding

Submitted July 11, 2017**

Before: CANBY, KOZINSKI, and HAWKINS, Circuit Judges.

In these consolidated appeals, Jesus Reyes-Lizarraga appeals the 28-month sentence imposed following his guilty-plea conviction for reentry of a removed alien, in violation of 8 U.S.C. § 1326, and the four-month consecutive sentence imposed upon revocation of supervised release. We have jurisdiction under 28

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

U.S.C. § 1291, and we affirm.

Reyes-Lizarraga contends that his aggregate sentence is substantively unreasonable because the district court failed to give sufficient weight to the 2016 amendments to the illegal reentry guideline, U.S.S.G. § 2L1.2, which were promulgated but not effective at the time of his sentencing. The record reflects that the court took account of the pending changes to the guideline and granted a significant downward variance. The court did not abuse its discretion in determining that a further downward variance was unwarranted in light of the 18 U.S.C. §3553(a) factors and the totality of the circumstances, including Reyes-Lizarraga's significant immigration history. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *see also United States v. Ruiz-Apolonio*, 657 F.3d 907, 918 (9th Cir. 2011) (“That the Commission has promulgated a not-yet-adopted amendment that is very likely to be adopted and that would result in reduced Guidelines ranges does not render a district court’s failure to grant a variance substantively unreasonable.”).

AFFIRMED.