

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 20 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 15-50431

Plaintiff-Appellee,

D.C. No. 3:15-cr-01189-BEN

v.

MEMORANDUM\*

JAVIER GARIBAY MENDOZA-  
ROMERO, a.k.a. Javier Garibay-Romero,  
a.k.a. Jose Mendoza-Romero,

Defendant-Appellant.

Appeal from the United States District Court  
for the Southern District of California  
Roger T. Benitez, District Judge, Presiding

Submitted November 15, 2017\*\*

Before: CANBY, TROTT, and GRABER, Circuit Judges.

Javier Garibay Mendoza-Romero appeals from the district court's judgment and challenges the 48-month sentence imposed following his guilty-plea conviction for being a removed alien found in the United States, in violation of

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\* 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).

8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Mendoza-Romero first argues that the district court erred in relying on his prior conviction for robbery under California Penal Code § 211 to impose a 12-level crime of violence enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii). This contention is foreclosed. *See United States v. Becerril-Lopez*, 541 F.3d 881, 893 (9th Cir. 2008) (a conviction for robbery under California Penal Code § 211 is a categorical crime of violence); *see also United States v. Chavez-Cuevas*, 862 F.3d 729, 740 (9th Cir. 2017) (affirming continuing viability of *Becerril-Lopez*).

Mendoza-Romero next claims that his sentence is substantively unreasonable in light of the decrease in the seriousness of his criminal offenses over time and other mitigating factors. The district court did not abuse its discretion in imposing Mendoza-Romero's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). Contrary to Mendoza-Romero's suggestion, the record reflects that the court considered his mitigating arguments. The sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) factors and the totality of the circumstances, including Mendoza-Romero's criminal and immigration history. *See Gall*, 552 U.S. at 51.

**AFFIRMED.**