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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>RAFAEL JIMENEZ-RODRIGUEZ, aka Jorge Hernandez,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 08-10037

D.C. No. CR-07-01029-ROS

MEMORANDUM *

Appeal from the United States District Court
for the District of Arizona
Roslyn O. Silver, District Judge, Presiding

Submitted January 13, 2009**

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Rafael Jimenez-Rodriguez appeals from the 46-month sentence imposed following his guilty-plea conviction for illegal reentry after deportation, in

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Jimenez-Rodriguez contends that the district court treated the Guidelines range as compulsory or, alternatively, as presumptively reasonable. Because Jimenez-Rodriguez did not object on these grounds in district court, plain error review applies. *See United States v. Dallman*, 533 F.3d 755, 761 (9th Cir. 2008). We conclude that Jimenez-Rodriguez cannot demonstrate “a reasonable probability that he would have received a different sentence” but for any error. *See id.* at 762.

Jimenez-Rodriguez further contends that his sentence is unreasonable because the district court did not apply a variance to offset the impact upon his advisory Guidelines range which resulted from a 16-level upward adjustment for a prior crime of violence, and the addition of two criminal history points pursuant to U.S.S.G. § 4A1.1(e). In light of the totality of the circumstances, we conclude that the sentence, at the low-end of the applicable Guidelines range, is reasonable. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc); *see also United States v. Barsumyan*, 517 F.3d 1154, 1158-60 (9th Cir. 2008).

AFFIRMED.