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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NOT FOR PUBLICATION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.

RAYMOND MILITANTE REBAYA,

Defendant - Appellant.

Nos. 09-50007 & 09-50034

D.C. Nos. 3:08-cr-01831-LAB
3:03-cr-02667-NAJ

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

In these consolidated appeals, Raymond Militante Rebaya appeals in No. 09-50007 from the 48-month sentence imposed following his guilty-plea conviction for transportation of illegal aliens and aiding and abetting, in violation of 8 U.S.C.

* 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).

§ 1324(a)(1)(A)(ii), and (v)(II), and in No. 09-50034 from the 18-month consecutive sentence imposed following revocation of supervised release. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

In No. 09-50007, Rebaya contends the district court procedurally erred by (1) imposing a sentence without properly explaining and considering all of the 18 U.S.C. § 3553(a) sentencing factors, and (2) failing to justify and explain why an above-guidelines sentence was necessary. The record belies this contention. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc); *see also id.* at 993 (appellate courts are to give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance).

In No. 09-50034, Rebaya contends the district court procedurally erred by failing to provide an explanation for the 18-month sentence imposed following the revocation of his supervised release. This contention fails because an adequate explanation may be inferred from the “record as a whole.” *See id.* at 992.

AFFIRMED.