

MAR 02 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARMANDO TORRES-NAVARETTE,

Defendant - Appellant.

No. 09-50011

D.C. No. 2:08-cr-00618-PA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted February 16, 2010**

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

Armando Torres-Navarette appeals from the 30-month sentence imposed after his guilty-plea conviction for being an illegal alien found in the United States following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction

* 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).

pursuant to 28 U.S.C. § 1291, and we affirm.

Torres-Navarete contends the district court procedurally erred by, among other things, departing upward pursuant to U.S.S.G. § 4A1.3 for under-represented criminal history. The district court did not err in imposing Torres-Navarete's sentence. *See United States v. Mohamed*, 459 F.3d 979, 986 (9th Cir. 2006); *see also United States v. Higuera-Llamas*, 574 F.3d 1206, 1212 (9th Cir. 2009).

Torres-Navarete also contends his sentence is substantively unreasonable. In light of the totality of the circumstances of this case and the 18 U.S.C. § 3553(a) sentencing factors, the sentence is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc) (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).

AFFIRMED.