

MAR 05 2010

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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NOT FOR PUBLICATION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.

JESUS ALVAREZ-RAMOS,

Defendant - Appellant.

No. 09-30198

D.C. No. 2:07-CR-02125-RHW

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Robert H. Whaley, Senior District Judge, Presiding

Submitted February 16, 2010\*\*

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

Jesus Alvarez-Ramos appeals from the 71-month sentence imposed following his guilty-plea conviction for being an illegal alien in the United States

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\* 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).

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

Alvarez-Ramos contends that the district court procedurally erred by applying an upward departure under U.S.S.G. § 4A1.3, based on its determination that his criminal history category understated his criminal history. He also contends that his sentence is substantively unreasonable because it is greater than necessary. The record reflects that the district court did not procedurally err in its calculation of the advisory sentencing Guideline range or consideration of the 18 U.S.C. § 3553(a) factors, and that the sentence is substantively reasonable in light of the totality of the circumstances. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc); *see also United States v. Higuera-Llamas*, 574 F.3d 1206, 1210-12 (9th Cir. 2009).

**AFFIRMED.**