

OCT 05 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NOT FOR PUBLICATION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.

LUIS ANGEL HERNANDEZ-RIOS,

Defendant - Appellant.

No. 09-50573

D.C. No. 3:09-cr-00995-JAH

MEMORANDUM*

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

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Luis Angel Hernandez-Rios appeals from the 60-month sentence imposed following his guilty-plea conviction for transportation of illegal aliens and aiding and abetting, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (v)(II); and high speed flight from an immigration checkpoint, in violation of 18 U.S.C. § 758. We

* 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).

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

Hernandez-Rios contends that the district court placed undue emphasis on aggravating circumstances that were already taken into account by the Sentencing Guidelines and the 18 U.S.C. § 3553(a) sentencing factors when it imposed an upward departure from the advisory Guidelines range. The district court departed upward by two levels, pursuant to U.S.S.G. § 5K2.0, based upon a combination of circumstances that were not adequately taken into consideration by the Guidelines. The record reflects that the district court carefully considered the § 3553(a) sentencing factors, including the need to avoid unwarranted sentencing disparities, and provided a well-reasoned and thorough explanation for the sentence imposed. The district court did not procedurally err, and the sentence is substantively reasonable under the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *see also United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

AFFIRMED.