

JAN 24 2011

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NOT FOR PUBLICATION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.

IVAN AREVALO-HERNANDEZ,

Defendant - Appellant.

No. 10-10142

D.C. No. 3:09-cr-00838-MHP

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted January 10, 2011**

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

Ivan Arevalo-Hernandez appeals from the 36-month sentence imposed following his guilty-plea conviction for illegal reentry following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Arevalo-Hernandez contends that the district court procedurally erred by failing to address his argument for a sentence in the Guidelines range applicable to defendants offered fast-track dispositions. The record reflects that the district court did not procedurally err. *See Rita v. United States*, 551 U.S. 338, 359 (2007); *United States v. Gonzalez-Zotelo*, 556 F.3d 736, 740 (9th Cir. 2009), *cert. denied*, 130 S. Ct. 83 (2009).

Furthermore, under the totality of the circumstances, the below-Guidelines sentence was not substantively unreasonable. *See Gall v. United States*, 552 U.S. 38, 51-52 (2007).

AFFIRMED.