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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>ANIBAR PALOMARES-TOLEDO,</p> <p>Defendant - Appellant.</p>

No. 10-10215

D.C. No. 2:09-cr-00346-RLH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, Chief Judge, Presiding

Submitted February 15, 2011**

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

Anibar Palomares-Toledo appeals from the 36-month sentence imposed following his guilty-plea conviction for being a deported alien found unlawfully in the United States, 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).

Palomares-Toledo contends that his sentence is substantively unreasonable because the district court failed to consider the age of his prior conviction in accordance with *United States v. Amezcua-Vasquez*, 567 F.3d 1050 (9th Cir. 2009). In addition, he argues that he does not present a risk to public safety and is unlikely to re-offend given the circumstances that prompted his illegal reentry into the United States and his relatively minor criminal history. However, in light of the totality of the circumstances and the factors set forth in 18 U.S.C. § 3553(a), the district court's sentence is not substantively unreasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *United States v. Carty*, 520 F.3d 984, 993-94 (9th Cir. 2008) (en banc); *see also United States v. Valencia-Barragan*, 608 F.3d 1103, 1108-09 (9th Cir. 2010) (emphasizing the limited scope of *Amezcua-Vasquez*'s holding).

AFFIRMED.