

MAR 14 2011

MOLLY C. DWYER, CLERK  
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NOT FOR PUBLICATION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>JESUS MARTINEZ-GONZALEZ,</p> <p>Defendant - Appellant.</p>
---

No. 10-30203

D.C. No. 2:09-cr-00109-WFN

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Wm. Fremming Nielsen, District Judge, Presiding

Submitted March 8, 2011\*\*

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Jesus Martinez-Gonzalez appeals from the 48-month sentence imposed following his guilty-plea conviction for being an alien in the United States after 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).

Martinez-Gonzalez argues that his sentence is substantively unreasonable given the nature of the offense, his motivation for reentering the United States, and his limited and stale criminal history. He further contends that the 16-level prior conviction sentencing enhancement under U.S.S.G. § 2L1.2(b)(1)(A) is per se unreasonable and resulted in a sentence that was greater than necessary.

Martinez-Gonzalez's argument that the 16-level sentencing enhancement is per se unreasonable fails. *See United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1054 (9th Cir. 2009); *see also United States v. Barsumyan*, 517 F.3d 1154, 1159 (9th Cir. 2008) (policy-based argument against the Guidelines must be asserted on the ground that its operation in a particular case results in a sentence that is unreasonable under 18 U.S.C. § 3553(a)).

In light of the totality of the circumstances and the § 3553(a) factors, the below-Guidelines sentence in this case is not substantively unreasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

**AFFIRMED.**