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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NOT FOR PUBLICATION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>ISMAEL MARTINEZ-HERNANDEZ,</p> <p>Defendant - Appellant.</p>

No. 09-10305

D.C. No. 4:07-cr-00663-PJH

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Submitted March 8, 2011**

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

Ismael Martinez-Hernandez appeals from the 77-month sentence imposed following his guilty-plea conviction for being a deported alien found 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).

Citing *United States v. Sanchez-Rodriguez*, 161 F.3d 556 (9th Cir. 1998) (en banc), Martinez-Hernandez contends that the district court erred when it failed to grant a two-level downward departure based on a pre-indictment delay. He also contends that his low-end Guidelines sentence is substantively unreasonable. The record reflects that the district court considered the *Sanchez* arguments, properly understood the scope of its direction in imposing the sentence, and did not otherwise procedurally err. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

Martinez-Hernandez also contends that his sentence is substantively unreasonable. The record reflects that, under the totality of the circumstances, the sentence at the bottom of the Guidelines range is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *see also Carty*, 520 F.3d at 993.

AFFIRMED.