

MAR 29 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NOT FOR PUBLICATION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 style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>ANTONIO TORRES-CORTEZ,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 10-50243

D.C. No. 3:09-cr-03499-MMA

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Michael M. Anello, District Judge, Presiding

Submitted March 8, 2011**

Before: FARRIS, O’SCANNLAIN, and BYBEE, Circuit Judges.

Antonio Torres-Cortez appeals from the 46-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).

Torres-Cortez contends that the district court procedurally erred at sentencing by failing to adequately justify the sentence imposed and to consider all of the factors set forth under 18 U.S.C. § 3553(a), including the staleness of a prior conviction which increased the applicable Guidelines range. He further contends that the resulting sentence is substantively unreasonable.

The record reflects that the district court did not procedurally err, *see United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc), and that, in light of the totality of the circumstances, the sentence at the bottom of the Guidelines range is substantively reasonable, *see id.* at 993-94.

AFFIRMED.