

OCT 13 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NOT FOR PUBLICATION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.

JOSE JASSO-ESTRADA,

Defendant - Appellant.

No. 10-50567

D.C. No. 3:10-cr-01247-L

MEMORANDUM*

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

Submitted September 27, 2011**

Before: SILVERMAN, W. FLETCHER, and MURGUIA, Circuit Judges.

Jose Jasso-Estrada appeals from the 30-month sentence imposed following his guilty-plea conviction for attempted entry 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).

Jasso-Estrada contends that the sentence is substantively unreasonable. In light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors, the bottom-of-the-Guidelines sentence is not substantively unreasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

Jasso-Estrada's contention that *Nijhawan v. Holder*, ___ U.S. ___, 129 S. Ct. 2294 (2009), overruled *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), is foreclosed by *United States v. Valdovinos-Mendez*, 641 F.3d 1031, 1035-36 (9th Cir. 2011).

AFFIRMED.