

OCT 27 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NOT FOR PUBLICATION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.

JANETTE RUBY TELLEZ-LOPEZ,

Defendant - Appellant.

No. 10-50241

D.C. No. 3:09-cr-02357-BEN

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted October 25, 2011**

Before: TROTT, GOULD, and RAWLINSON, Circuit Judges.

Janette Ruby Tellez-Lopez appeals from the 62-month sentence imposed following her 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. Appellant. P. 34(a)(2).

Tellez-Lopez contends that the district court procedurally erred by failing to address her non-frivolous argument for a downward departure or variance based on cultural assimilation and her difficulty adjusting to life in Mexico. This contention lacks merit as the record reflects that the district court considered Tellez-Lopez's arguments and deviated downward from the Guidelines range based on her specific circumstances. *See United States v. Dallman*, 533 F.3d 755, 761 (9th Cir. 2008) (defining plain error).

AFFIRMED.