

OCT 27 2011

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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NOT FOR PUBLICATION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>MANUEL ISAGUIRES-VARELA,</p> <p>Defendant - Appellant.</p>

No. 10-50587

D.C. No. 3:10-cr-03535-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted October 25, 2011**

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

Manuel Isaguires-Varela appeals from the 42-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).

Isaguires-Varela contends that the district court procedurally erred by using his two prior sentences for § 1326 convictions as a benchmark in fashioning the instant sentence, and by focusing exclusively on deterrence to the exclusion of other relevant sentencing factors. The record reflects that the district court used the advisory Guidelines range as the starting point and initial benchmark, before determining that a variance above the applicable Guidelines range was appropriate after consideration of several 18 U.S.C. § 3553(a) sentencing factors. The district court did not procedurally err, and the sentence is substantively reasonable under the totality of the circumstances and in light of the sentencing factors set forth in 18 U.S.C. § 3553(a). *See Gall v. United States*, 552 U.S. 38, 49-51 (2007); *see also United States v. Carty*, 520 F.3d 992-993 (9th Cir. 2008) (en banc).

AFFIRMED.