

JAN 27 2012

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NOT FOR PUBLICATION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>v.</p> <p>MANUEL ELISEO MARTINEZ- ESCOBEDO,</p> <p style="text-align: center;">Defendant - Appellant.</p>
--

No. 11-50149

D.C. No. 3:09-cr-03836-WQH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted January 17, 2012**

Before: LEAVY, TALLMAN, and CALLAHAN, Circuit Judges.

Manuel Eliseo Martinez-Escobedo appeals from the 75-month sentence imposed following his 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.

* 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).

§ 1291, and we affirm.

Martinez-Escobedo contends that the below-Guidelines sentence was substantively unreasonable. The record reflects that the sentence is substantively reasonable in light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

Martinez-Escobedo's contention that *Nijhawan v. Holder*, 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.