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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NOT FOR PUBLICATION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>WILFREDO TORRES-VALENZUELA,</p> <p>Defendant - Appellant.</p>
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No. 11-50328

D.C. No. 3:11-cr-01025-JLS-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submitted February 21, 2012 **

Before: FERNANDEZ, McKEOWN and BYBEE, Circuit Judges.

Wilfredo Torres-Valenzuela appeals the sentence imposed following his guilty plea to being a deported alien found in the United States in violation of 8 U.S.C. § 1326. Torres-Valenzuela contends that his 30-month sentence was

* 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).

substantively unreasonable. In light of the totality of the circumstances and the sentencing factors set forth in 18 U.S.C. § 3553(a), the sentence at the low end of the Guidelines range was reasonable. *See Gall v. United States*, 552 U.S. 38, 51, 128 S. Ct. 586, 169 L. Ed.2d 445 (2007).

Torres-Valenzuela's contention that *Nijhawan v. Holder*, 557 U.S. 29, 129 S. Ct. 2294, 174 L. Ed.2d 22 (2009), overruled *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed.2d 350 (1998), is foreclosed by *United States v. Valdovinos-Mendez*, 641 F.3d 1031, 1035–36 (9th Cir. 2011).

AFFIRMED.