

FEB 21 2013

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NOT FOR PUBLICATION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.

SANTOS DIAZ MARTINEZ, a.k.a.
Abacuc Palacios Barrera, a.k.a. Santos
Martinez Diaz, a.k.a. Jose Santos Diaz
Martinez,

Defendant - Appellant.

No. 12-50024

D.C. No. 2:11-cr-00868-PA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted February 11, 2013**

Before: FERNANDEZ, TASHIMA, and WARDLAW, Circuit Judges.

Santos Diaz Martinez appeals from the district court’s judgment and challenges the 48-month sentence imposed following his guilty-plea conviction for

* 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).

being an illegal alien found in the United States following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Diaz Martinez contends that the district court erred procedurally by not considering and granting a four-level departure under U.S.S.G. § 5K3.1. He also contends that the district court procedurally erred by failing to explain sufficiently its denial of that departure. We do not review departures for procedural correctness. *See United States v. Vasquez-Cruz*, 692 F.3d 1001, 1008 (9th Cir. 2012). Moreover, the district court need not give explicit reasons for rejecting a requested departure. *See id.*

Diaz Martinez points to no authority to support his contention that the district court's discretionary denial of the four-level departure recommended by the government violated the separation of powers.

AFFIRMED.