FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. EVODIO MORALES-HERNANDEZ, Defendant - Appellant.	No. 11-10519 D.C. No. 4:11-cr-00843-CKJ MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Lawrence L. Piersol, District Judge, Presiding**

Submitted June 10, 2013***

Before: HAWKINS, McKEOWN, and BERZON, Circuit Judges.

Evodio Morales-Hernandez appeals from the district court's judgment and challenges his 51-month sentence imposed following his guilty-plea conviction for

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Lawrence L. Piersol, Senior United States District Judge for the District of South Dakota, sitting by designation.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

reentry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

Morales-Hernandez contends that his counsel provided ineffective assistance by failing to cite relevant case law or brief an argument supporting a potential departure or variance based on the staleness of his criminal history. We decline to review Morales-Hernandez's ineffective assistance of counsel claims on direct appeal because this is not one of the "unusual cases where (1) the record on appeal is sufficiently developed to permit determination of the issue, or (2) the legal representation is so inadequate that it obviously denies a defendant his Sixth Amendment right to counsel." *See United States v. Rahman*, 642 F.3d 1157, 1159-60 (9th Cir. 2011). We therefore leave open the possibility that Morales-Hernandez might raise an ineffective assistance of counsel claim in collateral proceedings. *See id.*

AFFIRMED.