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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NOT FOR PUBLICATION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>RUBEN HERNANDEZ-AMPARAN,</p> <p>Defendant - Appellant.</p>
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No. 11-10677

D.C. No. 4:10-cr-03405-DCB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
David C. Bury, District Judge, Presiding

Submitted June 18, 2013\*\*

Before: TALLMAN, M. SMITH, and HURWITZ, Circuit Judges.

Ruben Hernandez-Amparan appeals from the district court’s judgment and challenges the 48-month sentence imposed following his jury-trial conviction for reentry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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

Hernandez-Ampan first contends that the district court failed to provide notice under Federal Rule of Criminal Procedure 32(h) of its intent to depart upwards from the advisory Guidelines range. Because the district court imposed an upward variance, it was not required to give notice under Rule 32(h). *See Irizarry v. United States*, 553 U.S. 708, 714-15 (2008).

Hernandez-Ampan next contends that the district court placed too much weight on deterrence and imposed a substantively unreasonable sentence. The district court did not abuse its discretion in imposing Hernandez-Ampan's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *United States v. Gutierrez-Sanchez*, 587 F.3d 904, 908 (9th Cir. 2009) ("The weight to be given the various factors in a particular case is for the discretion of the district court."). The above-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances. *See Gall*, 552 U.S. at 51.

**AFFIRMED.**