

JUN 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NOT FOR PUBLICATION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.

RICARDO CAZARES-OZUNA, a.k.a.
Richard Martinez,

Defendant - Appellant.

No. 12-10373

D.C. No. 2:12-cr-00085-LKK

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, District Judge, Presiding

Submitted June 18, 2013**

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

Ricardo Cazares-Ozuna appeals from the district court's judgment and challenges the 57-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326.

* 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).

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Cazares-Ozuna contends that the district court procedurally erred by “mechanically” imposing a Guidelines sentence and by failing to provide reasons as to why he was a danger to the community. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and find none. The record shows the district court understood that the Guidelines are advisory and adequately explained the sentence.

Cazares-Ozuna also contends that the district court abused its discretion by failing to depart or vary downward on the basis of his cultural assimilation. Our review of a district court’s exercise of discretion to depart or vary on the basis of cultural assimilation is limited to determining whether the court imposed a substantively reasonable sentence. *See United States v. Ellis*, 641 F.3d 411, 421-22 (9th Cir. 2011). The district court did not abuse its discretion in imposing Cazares-Ozuna’s sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence at the bottom of the advisory Guidelines range is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Cazares-Ozuna’s dangerousness to the community. *See U.S.S.G.* § 2L1.2 cmt. n. 8; *Gall*, 552 U.S. at 51.

AFFIRMED.