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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NOT FOR PUBLICATION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>JOSE LUIS RIVERA-CARBAJAL,</p> <p>Defendant - Appellant.</p>
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No. 12-10610

D.C. No. 2:11-cr-00427-HDM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Howard D. McKibben, District Judge, Presiding

Submitted June 18, 2013\*\*

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

Jose Luis Rivera-Carbajal appeals from the district court’s judgment and challenges the 51-month sentence imposed following his guilty-plea conviction for being a deported alien found unlawfully in the United States, 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).

Rivera-Carbajal argues that the district court erred procedurally by failing to consider his arguments in mitigation and by failing to explain adequately its reasons for declining to vary from the advisory Sentencing Guidelines range in light of those arguments. We review for plain error, *see United States v. Sylvester Norman Knows His Gun, III*, 438 F.3d 913, 918 (9th Cir. 2006), and find none. The record reflects that the court considered the 18 U.S.C. § 3553(a) sentencing factors, including Rivera-Carbajal's arguments in mitigation, and explained that a variance from the advisory Sentencing Guidelines range was unwarranted in light of Rivera-Carbajal's history, particularly his history of domestic violence. No more was required. *See Rita v. United States*, 551 U.S. 338, 358-59 (2007).

Rivera-Carbajal further contends that his sentence is substantively unreasonable. We review for abuse of discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The 51-month sentence at the low end of the undisputed advisory Sentencing Guidelines range is substantively reasonable in light of the totality of the circumstances and the section 3553(a) factors. *See id.*

**AFFIRMED.**