NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. PEDRO CUEVAS-PEREDA, Defendant - Appellant.	No. 12-50334 D.C. No. 3:12-cr-00425-BEN MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted November 19, 2013**

Before: CANBY, TROTT, and THOMAS, Circuit Judges.

Pedro Cuevas-Pereda 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. 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).

Cuevas-Pereda contends that the district court procedurally erred by failing to calculate the Guidelines range and explain sufficiently the sentence. Because defendant did not object to these alleged procedural errors, we review for plain error, *see United States v. Waknine*, 543 F.3d 546, 551 (9th Cir. 2008), and find none. The record reflects that the district court calculated the Guidelines range in accordance with the recommendation in the plea agreement, but then varied upward to impose the 57-month sentence. Further, it adequately explained the sentence. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

Cuevas-Pereda also argues that the district court failed to address his mitigating arguments at sentencing. The record reflects that the district court considered and addressed Cuevas-Pereda's mitigating arguments and concluded that they did not warrant a lower sentence.

Finally, Cuevas-Pereda contends that his sentence is substantively unreasonable in light of his impoverished upbringing and the age of his prior conviction for transporting aliens. The district court did not abuse its discretion in imposing Cuevas-Pereda's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Cuevas-Pereda's criminal history. *See id.*

AFFIRMED.