

JUL 29 2014

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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## NOT FOR PUBLICATION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.

ALEJANDRO HERNANDEZ-ACOSTA,

Defendant - Appellant.

No. 13-50441

D.C. No. 3:13-cr-00829-BEN

MEMORANDUM\*

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

Submitted July 22, 2014\*\*

Before: GOODWIN, CANBY, and CALLAHAN, Circuit Judges.

Alejandro Hernandez-Acosta appeals from the district court's judgment and challenges the 46-month sentence imposed following his guilty-plea conviction for importation of cocaine, in violation of 21 U.S.C. §§ 952 and 960. 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-Acosta contends that the district court procedurally erred by failing to calculate properly the Sentencing Guidelines range. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and find none. The record reflects that the district court accepted the parties' agreed-upon Guidelines calculations, granted a fast-track departure and a minor role adjustment, and then varied upward in light of the 18 U.S.C. § 3553(a) sentencing factors. The district court did not err. *See United States v. Carty*, 520 F.3d 984, 990-91 (9th Cir. 2008) (en banc).

Hernandez-Acosta also contends that his sentence is substantively unreasonable. The district court did not abuse its discretion in imposing Hernandez-Acosta's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence is substantively reasonable in light of the seriousness of the offense and the need to protect the public. *See* 18 U.S.C. § 3553(a)(1), (2).

**AFFIRMED.**