

AUG 19 2014

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NOT FOR PUBLICATION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.

MARIO SALDANA-ORTA,

Defendant - Appellant.

No. 14-50025

D.C. No. 3:13-cr-04181-BEN

MEMORANDUM*

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

Submitted August 13, 2014**

Before: SCHROEDER, THOMAS, and HURWITZ, Circuit Judges.

Mario Saldana-Orta appeals from the district court's judgment and challenges the 12-month sentence imposed following his guilty-plea conviction for being a removed 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.

* 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).

Saldana-Orta contends that the district court procedurally erred by basing his sentence on erroneous facts concerning prior domestic violence charges. Because he did not raise this objection below, we review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and find none. Given the court's repeated statements that the 12-month sentence was necessary as a deterrent to future illegal reentries, Saldana-Orta has not shown a reasonable probability that he would have received a different sentence. *See United States v. Dallman*, 533 F.3d 755, 762 (9th Cir. 2008).

Saldana-Orta also contends that his sentence is substantively unreasonable. The district court did not abuse its discretion in imposing Saldana-Orta's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). 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, including Saldana-Orta's immigration and criminal history. *See id.*

AFFIRMED.