

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 17 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 19-50252

Plaintiff-Appellee,

D.C. No. 3:19-cr-00186-LAB-1

v.

MEMORANDUM*

CLAUDIA SOLANO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted December 11, 2019**

Before: WALLACE, CANBY, and TASHIMA, Circuit Judges

Claudia Solano appeals from the district court's judgment and challenges the 18-month sentence imposed following her guilty-plea conviction for bringing in aliens and aiding and abetting in violation of 8 U.S.C. § 1324(a)(1)(A)(i), (v)(II).

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 Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Solano contends that the district court procedurally erred by (1) failing to consider or respond to her specific mitigating arguments, (2) failing to explain the upward variance sufficiently, and (3) relying on clearly erroneous facts regarding her upbringing. The record shows the district court considered Solano's arguments for a shorter sentence and addressed some of them. The court was not required to address specifically each of Solano's arguments. *See Rita v. United States*, 551 U.S. 338, 358-59 (2007). The court adequately explained the sentence and its reasons for varying upward, noting Solano's history of similar offenses and concluding that deterrence, just punishment, and promoting respect for the law supported an upward variance. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc). Finally, the district court did not choose the sentence based on clearly erroneous facts concerning Solano's upbringing: Rather, it relied on Solano's own characterization of her childhood in explaining why it was not persuaded by her mitigating arguments. *See United States v. Ameline*, 409 F.3d 1073, 1085 (9th Cir. 2005) (en banc) (district court may rely on uncontested facts in the presentence report at sentencing).

AFFIRMED.