

SEP 07 2010

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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NOT FOR PUBLICATION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>HERIBERTO VALENCIA,</p> <p>Defendant - Appellant.</p>
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No. 09-10266

D.C. No. 2:08-cr-01408-FJM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Frederick J. Martone, District Judge, Presiding

Submitted August 23, 2010\*\*

Before: LEAVY, HAWKINS, and THOMAS, Circuit Judges.

Heriberto Valencia appeals from the 37-month sentence imposed following his guilty-plea conviction for reentry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Valencia contends that his above-guidelines sentence is substantively

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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).

unreasonable given his background and criminal record. The record reflects the district court did not procedurally err, and the sentence imposed is substantively reasonable under the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

Further, contrary to Valencia's contention, the prospective amendment to the sentencing guidelines does not assist his case. *See* U.S.S.G. § 2L1.2.

**AFFIRMED.**