

OCT 27 2010

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NOT FOR PUBLICATION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.

JESUS BACA-HERNANDEZ,

Defendant - Appellant.

No. 09-50546

D.C. No. 3:08-cr-01000-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted October 19, 2010**

Before: O'SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

Jesus Baca-Hernandez appeals from the 70-month sentence imposed following his guilty-plea conviction for attempted entry after deportation, 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).

Baca-Hernandez contends that the district court erred by denying his request for a downward departure for cultural assimilation under U.S.S.G. § 5K2.0. He also contends that his sentence is substantively unreasonable. The district court did not procedurally err, and the sentence is substantively reasonable. *See United States v. Dallman*, 533 F.3d 755, 760-61 (9th Cir. 2008); *United States v. Carty*, 520 F.3d 984, 992-94 (9th Cir. 2008) (en banc).

AFFIRMED.