

APR 11 2011

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NOT FOR PUBLICATION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.

SANTOS TOLENTINO-AVILA,

Defendant - Appellant.

No. 10-50421

D.C. No. 3:10-cr-01736-GT

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Gordon Thompson, District Judge, Presiding

Submitted April 5, 2011**

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Santos Tolentino-Avila appeals from the 18-month sentence imposed following his guilty-plea conviction for being a deported 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).

Tolentino-Avila contends that the district court procedurally erred by failing to address and consider his non-frivolous arguments in support of a lower sentence. The record reflects that the district court considered Tolentino-Avila's mitigating arguments regarding his personal history and future plans, but found the circumstances insufficient to warrant a sentence below the Guidelines range. *See United States v. Stoterau*, 524 F.3d 988, 999-1000 (9th Cir. 2008). The district court provided an adequate explanation for the sentence imposed, and did not otherwise procedurally err. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

AFFIRMED.