

MAY 21 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NOT FOR PUBLICATION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.

JOSE OMAR ACOSTA-ALVAREZ,

Defendant - Appellant.

No. 13-50360

D.C. No. 3:13-cr-01525-LAB

MEMORANDUM*

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

Submitted May 13, 2014**

Before: CLIFTON, BEA, and WATFORD, Circuit Judges.

Jose Omar Acosta-Alvarez appeals from the district court's judgment and challenges the 36-month sentence and three-year term of supervised release imposed following his guilty-plea conviction for being a removed alien found in

* 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).

the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Acosta-Alvarez contends that the district court committed procedural error by failing to explain adequately either the extent of its variance from the advisory Sentencing Guidelines or its imposition of a term of supervised release. Contrary to Acosta-Alvarez's argument, we review for plain error because he did not assert these objections in the district court. *See United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 & n.3 (9th Cir. 2010). The district court sufficiently explained the sentence, including the supervised release term. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc) (“[A]dequate explanation in some cases may . . . be inferred from . . . the record as a whole.”).

Acosta-Alvarez also contends that the three-year term of supervised release is substantively unreasonable. The district court did not abuse its discretion in imposing supervised release. *See United States v. Valdavinosa-Torres*, 704 F.3d 679, 692 (9th Cir. 2012). The three-year term is not substantively unreasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and Acosta-Alvarez's criminal and immigration history. *See id.* at 692-93; U.S.S.G. § 5D1.1 cmt. n.5.

AFFIRMED.