

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

OCT 2 2017

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSE YANEZ-DOMINGUEZ,

Defendant-Appellant.

No. 16-50483

D.C. No. 3:16-cr-02317-DMS

MEMORANDUM\*

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

Submitted September 26, 2017\*\*

Before: SILVERMAN, TALLMAN, and N.R. SMITH, Circuit Judges.

Jose Yanez-Dominguez appeals from the district court's judgment and challenges the 18-month sentence imposed following his guilty-plea conviction for being a removed 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.

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\* 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).

Yanez-Dominguez contends that the district court improperly relied on his criminal history as a reason to deny the parties' joint request for a fast-track departure under U.S.S.G. § 5K3.1 and impose an above-Guidelines sentence. The court did not abuse its discretion. *See United States v. Rosales-Gonzales*, 801 F.3d 1177, 1180 (9th Cir. 2015). The court properly considered Yanez-Dominguez's criminal and immigration history, including his two previous illegal reentry offenses for which he received lengthy sentences. *See id.* at 1184. Moreover, the 18-month sentence, two months above the high end of the guideline range, is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

**AFFIRMED.**