

AUG 17 2009

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NOT FOR PUBLICATION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.

BENJAMIN LOPEZ-LOPEZ,

Defendant - Appellant.

No. 08-50341

D.C. No. 3:04-cr-00603-JAH

MEMORANDUM*

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

Submitted August 11, 2009**

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

Benjamin Lopez-Lopez appeals from the 235-month sentence imposed following modification pursuant to 18 U.S.C. § 3582(c)(2). We have jurisdiction

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

pursuant to 28 U.S.C. § 1291, and we affirm.

Lopez-Lopez contends that the district court procedurally erred by failing to explain why it denied his request for a variance below the modified Guidelines range. We review for plain error, *see United States v. Dallman*, 533 F.3d 755, 761 (9th Cir. 2008), and we affirm because Lopez-Lopez has not established that any error affected his substantial rights, *see id.* at 761-62.

AFFIRMED.