

MAR 02 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL LIZARRAGA,

Defendant - Appellant.

No. 09-50212

D.C. No. 3:06-cr-00755-LAB

MEMORANDUM*

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

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Michael Lizarraga appeals from the 18-month sentence imposed upon revocation of supervised release. We have jurisdiction pursuant to 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).

Lizarraga contends that the district court procedurally erred by failing to calculate and consider the applicable range under the Sentencing Guidelines. As Lizarraga concedes, this contention is reviewed for plain error. *See United States v. Knows His Gun*, 438 F.3d 913, 918 (9th Cir. 2006). Applying this standard, the record reflects that the district court did not procedurally err at sentencing. *See id.*; *see also United States v. Carty*, 520 F.3d 983, 993 (9th Cir. 2008) (en banc).

Lizarraga also contends, to preserve for further review, that the supervised release revocation procedure under 18 U.S.C. § 3583 violates the Sixth Amendment. As Lizarraga concedes, this contention is foreclosed by *United States v. Santana*, 526 F.3d 1257, 1262 (9th Cir. 2008).

AFFIRMED.