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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NOT FOR PUBLICATION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.

HUGO DOMINGUEZ-RODRIGUEZ,

Defendant - Appellant.

No. 09-50240

D.C. No. 3:07-CR-01972-JM

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, District Judge, Presiding

Submitted February 16, 2010**

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

Hugo Dominguez-Rodriguez appeals from the 108-month sentence imposed following his guilty-plea conviction of importation of methamphetamine, in violation of 21 U.S.C. §§ 952, 960. We have jurisdiction under 28 U.S.C. § 1291,

* 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).

and we affirm.

Dominguez-Rodriguez contends that the district court erred by determining that the Government's substantial assistance motion was the sole permissible basis for a variance or departure below the mandatory minimum. He asserts that the district court was not bound by the requirements of 18 U.S.C. § 3553(e) because *United States v. Booker*, 543 U.S. 220 (2005), rendered the Sentencing Guidelines advisory. These contentions are foreclosed. *See United States v. Jackson*, 577 F.3d 1032, 1035-36 n.1 (9th Cir. 2009); *see also United States v. Auld*, 321 F.3d 861, 867 (9th Cir. 2003).

AFFIRMED.