

FEB 22 2012

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NOT FOR PUBLICATION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 FRANCISCO ALVAREZ,

Defendant - Appellant.

No. 10-50556

D.C. No. 2:08-cr-00768-DSF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted February 21, 2012**

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Jose Francisco Alvarez appeals from the 121-month sentence imposed following his guilty-plea conviction for distribution of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). 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 dismiss.

Francisco Alvarez filed his notice of appeal (“NOA”) on November 8, 2010, almost one year after the November 17, 2009, entry of judgment. His appeal is, therefore, untimely. *See* Fed. R. App. P. 4(b)(1)(A). Because the government properly objected to the timeliness of the NOA, we must dismiss the appeal. *See United States v. Sadler*, 480 F.3d 932, 941-42 (9th Cir. 2007).

We find no basis to interpret this claim as an action brought under 28 U.S.C. § 2255.

DISMISSED.