

APR 20 2012

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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NOT FOR PUBLICATION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.

EZEQUIEL RODRIGUEZ, Jr.,

Defendant - Appellant.

No. 11-50354

D.C. No. 3:10-cr-03623-JLS

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Janis L. Sammartino, District Judge, Presiding

Submitted April 17, 2012\*\*

Before: LEAVY, PAEZ, and BEA, Circuit Judges.

Ezequiel Rodriguez, Jr., appeals from the 120-month sentence imposed following his guilty-plea conviction for possession of cocaine with intent to distribute and aiding and abetting, in violation of 21 U.S.C. § 841(a)(1) and 18

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\* 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).

U.S.C. § 2. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The government contends that this appeal should be dismissed in light of the appeal waiver set forth in Rodriguez's plea agreement. We decline to reach the issue of whether this appeal falls within the scope of the appeal waiver, and instead affirm on the merits. *See United States v. Jacobo Castillo*, 496 F.3d 947, 957 (9th Cir. 2007) (en banc).

Rodriguez contends that the district court erred by denying him relief under the safety valve provision of 18 U.S.C. § 3553(f) and U.S.S.G. § 5C1.2. The district court's finding that Rodriguez was ineligible for safety valve relief because he did not give the government all of the information that he had regarding the offense was not clearly erroneous. *See United States v. Alba-Flores*, 577 F.3d 1104, 1107 (9th Cir. 2009).

**AFFIRMED.**