

SEP 11 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NOT FOR PUBLICATION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.

ROMEO LOPEZ-HERNANDEZ,

Defendant - Appellant.

No. 11-50478

D.C. No. 3:11-cr-03190-GT-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Gordon Thompson, Senior District Judge, Presiding

Submitted September 6, 2012**
Pasadena, California

Before: **KOZINSKI**, Chief Judge, **WATFORD** and **HURWITZ**, Circuit
Judges.

Romeo Lopez-Hernandez challenges his sentence to twenty-four months’
incarceration and three years’ supervised release for illegally entering the United
States after being deported.

* This disposition isn’t appropriate for publication and isn’t 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).

1. Lopez-Hernandez's sentence to twenty-four months' incarceration is less than the statutory maximum of ten years, but six months above the maximum recommended by the federal Sentencing Guidelines. The Sentencing Guidelines are only advisory. Gall v. United States, 128 S. Ct. 586, 594 (2007). As directed by 18 U.S.C. § 3553(a), the sentencing judge weighed several factors, including the recommendation of the Sentencing Guidelines, the fact that Lopez-Hernandez had been thrice convicted of illegal entry and the fact that he was previously sentenced to eighteen months for the same offense. The judge didn't abuse his discretion by giving him six additional months.

2. As Lopez-Hernandez's attorney told the judge at sentencing, the Sentencing Guidelines recommend against imposing supervised release on deportable aliens under "ordinar[y]" circumstances. See U.S. Sentencing Guidelines Manual § 5D1.1(c). But Lopez-Hernandez's circumstances are not ordinary. Supervised release is appropriate for deportable aliens when "it would provide an added measure of deterrence and protection." U.S. Sentencing Guidelines Manual § 5D1.1 cmt. 5. As the sentencing judge noted, Lopez-Hernandez was "violating supervised release" when he committed the offense, so additional supervised release was warranted.

AFFIRMED.