

SEP 14 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NOT FOR PUBLICATION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.

EFREN OCHOA-GEMBE,

Defendant - Appellant.

No. 11-50407

D.C. No. 3:09-cr-02916-JLS-1

MEMORANDUM*

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

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Efren Ochoa-Gembe appeals the 235-month sentence imposed following his guilty plea to conspiracy to import methamphetamine and cocaine in violation of

* 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).

21 U.S.C. §§ 952, 960, and 963. We have jurisdiction under 28 U.S.C. § 1291, and we dismiss.

Ochoa-Gembe contends that the district court erred by not adequately addressing the disparity between his sentence and those of similarly-situated individuals, and by not sufficiently reducing his sentence for the cooperation he provided. In his written plea agreement, Ochoa-Gembe waived his right to appeal his conviction and sentence unless the district court imposed a sentence higher than the high end of the resulting advisory Guidelines range. The district court sentenced Ochoa-Gembe to the low end of the advisory Guideline range, and as Ochoa-Gembe acknowledged in his opening brief, his “sentence was within the range requiring defendant to waive his appeal.” We conclude that Ochoa-Gembe knowingly and voluntarily agreed to the appellate waiver, and we enforce the appellate waiver. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011).

DISMISSED.