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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>ALBERTO CORTEZ-SANCHEZ,</p> <p>Defendant - Appellant.</p> |
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No. 12-10143

D.C. No. 4:11-cr-03698-RCC

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Marvin E. Aspen, District Judge, Presiding\*\*

Submitted March 12, 2013\*\*\*

Before: PREGERSON, REINHARDT, and W. FLETCHER, Circuit Judges.

Alberto Cortez-Sanchez appeals from the district court’s judgment and challenges his guilty-plea conviction and 24-month sentence for reentry after

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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 Honorable Marvin E. Aspen, Senior United States District Judge for the Northern District of Illinois, sitting by designation.

\*\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

deportation, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Cortez-Sanchez's counsel has filed a brief stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. We have provided Cortez-Sanchez the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80 (1988), discloses no arguable grounds for relief on direct appeal as to Cortez-Sanchez's conviction and custodial sentence. However, before Cortez-Sanchez was sentenced, the Guidelines were amended to recommend against the imposition of supervised release in cases where the defendant is likely to be deported after imprisonment. *See* U.S.S.G. § 5D1.1(c) & cmt. n.5 (2011). Because the record suggests that the district court did not consider section 5D1.1(c) when it imposed supervised release in this case, we vacate Cortez-Sanchez's 3-year term of supervised release and remand for the district court to reconsider the imposition of supervised release in light of that section.

Counsel's motion to withdraw is **GRANTED**.

The government's motion to strike a misfiled letter is **GRANTED**.

**AFFIRMED, sentence VACATED in part, REMANDED.**