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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JESUS MANUEL ZUNIGA,</p> <p>Defendant - Appellant.</p>

No. 13-30095

D.C. No. 1:10-cr-00033-BLW

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief Judge, Presiding

Submitted December 17, 2013**

Before: GOODWIN, WALLACE, and GRABER, Circuit Judges.

Jesus Manuel Zuniga appeals from the district court’s judgment and challenges the 24-month statutory maximum sentence imposed upon revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Zuniga contends that the district court procedurally erred by confusing the

* 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).

24-month statutory maximum with the top of the Guidelines range when it imposed the sentence. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and find none. The record reflects that the district court was aware of the applicable Guidelines range and simply misspoke when it stated that 24 months was at the top of the Guidelines range. Furthermore, any error did not affect Zuniga's substantial rights. *See United States v. Olano*, 507 U.S. 725, 734-35 (1993).

We decline to consider Zuniga's argument that the district court failed to explain the sentence, because he raised it for the first time in the reply brief. *See United States v. Mejia-Pimental*, 477 F.3d 1100, 1105 n.9 (9th Cir. 2007).

AFFIRMED.