

OCT 21 2015

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NOT FOR PUBLICATION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.

HERNAN GOMEZ-GUTIERREZ,

Defendant - Appellant.

No. 14-30150

D.C. No. 1:13-cr-00123-EJL

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted October 14, 2015**

Before: SILVERMAN, BERZON, and WATFORD, Circuit Judges.

Hernan Gomez-Gutierrez appeals from the district court's judgment and challenges the 180-month sentence imposed following his guilty-plea conviction for conspiracy to distribute methamphetamine, in violation of 21 U.S.C.

* 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).

§§ 841(a)(1) and 846. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Gomez-Gutierrez argues for the first time on appeal that the government breached the plea agreement by implicitly arguing for a sentence greater than the one it had agreed to recommend. We review for plain error, *United States v. Gonzalez-Aguilar*, 718 F.3d 1185, 1187 (9th Cir. 2013), and find none. Even assuming that the government's isolated and brief comments breached the plea agreement, Gomez-Gutierrez has not shown that there is a reasonable probability that he would have received a shorter sentence absent the government's alleged breach. *See id.* at 1187-90.

AFFIRMED.