

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 11 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 22-50120

Plaintiff-Appellee,

D.C. No.

2:19-cr-00244-DSF-1

v.

RAMON LOPEZ-GARCIA, AKA Ramon
Garcia Lopez,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted March 7, 2024**
Pasadena, California

Before: H.A. THOMAS and DESAI, Circuit Judges, and MÁRQUEZ,** District
Judge.

Ramon Lopez-Garcia pled guilty to possessing methamphetamine with

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

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

*** The Honorable Rosemary Márquez, United States District Judge for
the District of Arizona, sitting by designation.

intent to distribute. He appeals the district court's imposition of conditions of supervised release prohibiting him from affiliating with the Canton Gang's members or being present in areas where the Canton Gang is known to be found (Conditions No. 10 and 11), as well as a condition of supervised release requiring him to undergo a psycho-sexual evaluation (Condition No. 9). We have jurisdiction under 18 U.S.C. § 3742(a). We affirm the imposition of Condition No. 9, but vacate Conditions No. 10 and 11, and remand for further proceedings.

1. Lopez-Garcia argues that the requirement that he undergo a psycho-sexual evaluation is unreasonable, because he committed the underlying sex offense justifying the condition almost 20 years before his sentencing in this case. Because Lopez-Garcia did not object to this condition before the district court, both parties agree that we may review the district court's decision only for plain error. *United States v. Lillard*, 57 F.4th 729, 736 (9th Cir. 2023).

The district court did not err. Although Lopez-Garcia committed the underlying sex offense in 2002, he failed to re-register as a sex offender in 2017, as he was required to do. We have upheld a condition of supervised release requiring a sex offender assessment after an offender fails to register, even when the underlying sex offense occurred decades before. *United States v. Hohag*, 893 F.3d 1190, 1194–95 (9th Cir. 2018). Nor does it matter that Lopez-Garcia's present conviction is unrelated to his sex offense or his failure to register, "because the

sentencing judge is statutorily required to look forward in time to crimes that may be committed in the future by the convicted defendant.” *United States v. Bainbridge*, 746 F.3d 943, 951 (9th Cir. 2014) (quoting *United States v. Blinkinsop*, 606 F.3d 1110, 1119 (9th Cir. 2010)) (upholding a condition of supervised release requiring the defendant to undergo a sexual deviancy evaluation). The district court therefore reasonably required Lopez-Garcia to submit to a psycho-sexual evaluation as a condition of his supervised release.

2. Lopez-Garcia argues that the district court erred in prohibiting him from affiliating with the Canton Gang, because it did not expressly resolve the disputed factual question whether he had ever been a member of the Canton Gang as required by Federal Rule of Criminal Procedure 32(i)(3)(B). “[W]e review de novo the sentencing court’s compliance with Rule 32.” *United States v. Wijegoonaratna*, 922 F.3d 983, 989 (9th Cir. 2019).¹

Rule 32(i)(3)(B) states that a sentencing court “must—for any disputed portion of the presentence report or other controverted matter—rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect

¹ The Government suggests that plain error review may apply, because Lopez-Garcia did not specifically object to Conditions No. 10 and 11 before the district court. The Government acknowledges, however, that Lopez-Garcia preserved his Rule 32 objection. And conditions of supervised release may be vacated for failure to comply with Rule 32(i)’s requirements. *See United States v. Wise*, 391 F.3d 1027, 1033 (9th Cir. 2004) (discussing Rule 32(i)’s notice requirement).

sentencing, or because the court will not consider the matter in sentencing.” “Rule 32 findings need not be detailed and lengthy, but they must state the court’s resolution of the disputed issues.” *Wijegoonaratna*, 922 F.3d at 990 (quoting *United States v. Job*, 871 F.3d 852, 869 (9th Cir. 2017)) (internal quotations omitted). “We mandate strict compliance with Rule 32.” *Job*, 871 F.3d at 869 (internal quotations omitted).

Although Lopez-Garcia contested the Presentence Investigation Report’s finding that he was a suspected member of the Canton Gang, the district court nevertheless imposed conditions prohibiting him from affiliating with the Canton Gang without addressing this dispute. This was in error. *See id.*

The Government argues that the district court implicitly found that Lopez-Garcia was a member of the Canton Gang when it imposed Conditions No. 10 and 11. But we have consistently rejected arguments of this sort, because Rule 32 requires the district court to expressly address factual disputes. *See, e.g., id.* at 870; *United States v. Doe*, 705 F.3d 1134, 1155 (9th Cir. 2013); *United States v. Carter*, 219 F.3d 863, 868 (9th Cir. 2000). And the cases on which the Government relies do not support its argument, as in each of those cases the district court made some express factual finding encompassing the disputed issue. *See United States v. Rigby*, 896 F.2d 392, 394 (9th Cir. 1990); *United States v. Doe*, 488 F.3d 1154, 1158–59 (9th Cir. 2007); *see also United States v. Ross*, 476 F.3d 719, 721–22 (9th

Cir. 2007). Accordingly, we vacate Conditions No. 10 and 11 and remand this case for the district court to reconsider those conditions. *See United States v. Montoya*, 82 F.4th 640, 656 (9th Cir. 2023) (en banc).

AFFIRMED in part, VACATED in part, and REMANDED.²

² The parties shall bear their own costs on appeal.