

## Appendix A

**United States v. Lopez-Castillo**

United States Court of Appeals for the Ninth Circuit

August 15, 2018\*\*

, Submitted; August 21, 2018, Filed

No. 17-10098

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

**Reporter**

735 Fed. Appx. 363 \*, 2018 U.S. App. LEXIS 23385 \*\*

UNITED STATES OF AMERICA, Plaintiff-Appellee, v.  
JOSE LOPEZ-CASTILLO, Defendant-Appellant.

**Notice:** PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.*

**Prior History:** [\*\*1] Appeal from the United States District Court for the District of Arizona. D.C. No. 4:15-cr-02148-CKJ. Cindy K. Jorgenson, District Judge, Presiding.

**Disposition:** AFFIRMED.

## Core Terms

safety-valve, district court, mandatory-minimum, challenges, disclosure, distribute, sentence, argues

**Counsel:** For UNITED STATES OF AMERICA, Plaintiff - Appellee: Christina Vejar, Corey James Mantei, Assistant U.S. Attorney, Assistant U.S. Attorney, United States Department of Justice, Office of Attorney General, Tucson, AZ.

For JOSE LOPEZ-CASTILLO, Defendant - Appellant: John Carl Lemon, II, Attorney, LAW OFFICES OF JOHN C. LEMON, San Diego, CA.

**Judges:** Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

## Opinion

### [\*363] MEMORANDUM\*

Jose Lopez-Castillo appeals from the district court's judgment and challenges the 120-month, mandatory-minimum sentence imposed following his guilty-plea conviction for possession with intent to distribute and conspiracy to possess with intent to distribute marijuana, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(vii) and 846. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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

Lopez-Castillo challenges the district court's failure to award safety-valve relief from the mandatory minimum under 18 U.S.C. § 3553(f). He argues that the district court erred by failing to define the scope of the disclosure required under section 3553(f)(5) and failing to make a specific finding that his disclosure did not meet the requirement. [\*\*2] This claim fails because the court specifically found that Lopez-Castillo had failed to provide the government with truthful and complete information about his involvement in the drug-trafficking organization. Lopez-Castillo has not shown that the court's failure to say more was a violation of [Rule 32\(i\)\(3\)\(B\)](#), even assuming it is applicable here. The district court's finding that Lopez-Castillo was ineligible for safety-valve relief was not clearly erroneous. See [United States v. Orm Hieng, 679 F.3d 1131, 1144-45 \(9th Cir. 2012\)](#). Nor did the district court abuse [\*364] its discretion by denying safety-valve relief without conducting an evidentiary hearing. See [United States v. Real-Hernandez, 90 F.3d 356, 362 \(9th Cir. 1996\)](#).

Lopez-Castillo also argues that [United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 \(2005\)](#), and its progeny abrogated mandatory-minimum sentencing. Our decision in [United States v. Wipf, 620 F.3d 1168 \(9th Cir. 2010\)](#), forecloses this argument.

**AFFIRMED.**

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