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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NOT FOR PUBLICATION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>PEDRO MORALES-CARDENAS,</p> <p>Defendant - Appellant.</p> |
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No. 10-30120

D.C. No. 2:09-cr-00010-LRS

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Lonny R. Suko, Chief Judge, Presiding

Submitted November 16, 2010\*\*

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

Pedro Morales-Cardenas appeals from the district court’s order denying his motion, under Fed. R. Crim. P. 35(a), to correct the judgment. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The government contends that the appeal waiver in Morales-Cardenas’ plea

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

agreement precludes our reaching the merits of Morales-Cardenas' claim on appeal. Because Morales-Cardenas challenges the sentence imposed in the written judgment as unconstitutional, the appeal waiver does not apply, and we may reach the merits. *See United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007) (citations omitted).

Morales-Cardenas contends that the district court erred when it declined to correct the written judgment to reflect the sentence of nine months imprisonment pronounced at the sentencing hearing. This contention fails because the court's oral pronouncement of sentence was ambiguous. Although an unambiguous oral pronouncement controls a directly conflicting written judgment, *see United States v. Munoz-Dela Rosa*, 495 F.2d 253, 256 (9th Cir. 1974) (per curiam), when "the oral pronouncement is ambiguous or open to reasonable interpretation . . . , it cannot possibly 'control.'" *United States v. O'Brien*, 789 F.2d 1344, 1347 (9th Cir. 1986).

**AFFIRMED.**