UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RODRIGO GONZALEZ-LOZANO, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	CASE NO. 16cv2852-LAB **ORDER DENYING MOTION UNDER 28 U.S.C. § 2255**

Two years ago Rodrigo Gonzalez-Lozano pled guilty to conspiracy to distribute methamphetamine. The guidelines suggested up to 210 months in prison; the Court sentenced Lozano to 99 months. Lozano asks the Court to vacate his sentence because he received ineffective assistance of counsel. The Court denies the motion for two reasons.

First, it's untimely. Lozano filed this motion more than a year after the Court entered final judgment on April 13, 2015. 22 U.S.C. § 2255(f); *see United States v. Schwartz*, 274 F.3d 1220, 1223 (9th Cir. 2001). Second, counsel wasn't ineffective by failing to argue that the government breached its promise of a 70-month sentence. The plea agreement makes clear that sentencing is in the sole discretion of the judge.[1] The motion is **DENIED**.

IT IS SO ORDERED.

DATED: July 25, 2017

HONORABLE LARRY ALAN Burns
United States District Judge

[1] For example, the agreement states that the sentencing "recommendation made by the Government is not binding on the Court, and it is uncertain at this time what Defendant's sentence will be." Dkt. 231.

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