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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. FELIPE PEREZ-MENDEZ, Defendant - Appellant.	No. 11-50024 D.C. No. 3:10-cr-02512-JLS-1 MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

Felipe Perez-Mendez appeals from a condition of supervised release imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326(a). We dismiss the appeal in light of the valid appeal waiver.

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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).

A defendant's waiver of the right to appeal his sentence will not apply if, among other exceptions not relevant here, the sentence violates the Constitution. *See United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007). Perez-Mendez contends that the condition of his supervised release requiring him to submit to DNA collection violates the Fourth Amendment. However, this contention is foreclosed by *United States v. Hugs*, 384 F.3d 762, 769 (9th Cir. 2004) ("A condition of supervised release requiring a qualified felon to provide a DNA sample pursuant to the procedures set forth in the DNA Act, 42 U.S.C. § 14135a, does not violate the Fourth Amendment."). Perez-Mendez's contention that the appeal waiver is inapplicable under *United States v. Montilla*, 870 F.2d 549 (9th Cir. 1989) is also unavailing.

We therefore dismiss Perez-Mendez's appeal.

DISMISSED.