

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 99-2563

United States of America,	*	
	*	
Appellee,	*	Appeal from the United States
	*	District Court for the District
v.	*	of Nebraska.
	*	
Michael Ybarra,	*	[UNPUBLISHED]
	*	
Appellant.	*	

Submitted: February 7, 2000

Filed: February 10, 2000

Before LOKEN, FAGG, and HANSEN, Circuit Judges.

PER CURIAM.

Michael Ybarra appeals his sentence for conspiring to distribute methamphetamine. For reversal, Ybarra raises various challenges to the government's failure to move for a sentencing departure under U.S. Sentencing Guidelines Manual § 5K1.1, p.s. (1999), and 18 U.S.C. § 3553(e).

We reject these contentions. Ybarra did not complain at sentencing about the lack of a departure motion, the plea agreement preserved the government's discretion whether to move for departure, and Ybarra made no substantial threshold showing the

government acted irrationally, in bad faith, or based on an unconstitutional motive. See United States v. Kelly, 18 F.3d 612, 617-18 (8th Cir. 1994); United States v. Romsey, 975 F.2d 556, 558 (8th Cir. 1992); United States v. Oransky, 908 F.2d 307, 309 (8th Cir. 1990). Ybarra also has not shown how he was prejudiced by the denial of his sentencing-continuance motion. See United States v. Ulrich, 953 F.2d 1082, 1085 (8th Cir. 1991).

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.