

IN THE SUPREME COURT OF THE UNITED STATES

GUADALUPE AVENDANO-VASQUEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

APPENDIX

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-12179
Non-Argument Calendar

D.C. Docket No. 8:14-cr-00395-VMC-TGW-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

GUADALUPE AVENDANO-VASQUEZ,
a.k.a. Matt,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(September 27, 2018)

Before TJOFLAT, JORDAN, and HULL, Circuit Judges.

PER CURIAM:

Guadalupe Avendano-Vasquez appeals from his conviction and sentence,
which included a three-year term of supervised release, imposed after he pleaded

l a.

guilty to transferring false identification documents, pursuant to a written plea agreement. He contends that there is a question as to whether his conviction was considered final for removal purposes, and his term of supervised release should be vacated because the district court did not consider his status as a defendant likely to be deported. The Government has moved to dismiss the appeal pursuant to the sentence appeal waiver contained in the plea agreement.

To the extent that Avendano-Vasquez challenges his removal or related proceedings, we lack jurisdiction to review his arguments and DISMISS in part his appeal for lack of jurisdiction. See U.S.C. § 1229a(a)(1), (3); 8 U.S.C. § 1252(a)(1), (b)(1); *Dakane v. U.S. Att'y Gen.*, 399 F.3d 1269, 1272 n.3 (11th Cir. 2005).

As to the remainder of the appeal, the Government's motion to dismiss the appeal pursuant to the appeal waiver in Avendano-Vasquez's plea agreement is GRANTED. See *United States v. Bushert*, 997 F.2d 1343, 1350-51 (11th Cir. 1993) (sentence appeal waiver will be enforced if it was made knowingly and voluntarily); *United States v. Grinard-Henry*, 399 F.3d 1294, 1296 (11th Cir. 2005) (waiver of the right to appeal includes waiver of the right to appeal difficult or debatable legal issues or even blatant error).

2 a.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

vs

**Case Number. 8:14-cr-395-T-33TGW
USM Number: 61362-018**

GUADALUPE AVENDANO-VASQUEZ

Bryant R. Camareno, Retained

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Count Three of the Indictment. Accordingly, the court has adjudicated that the defendant is guilty of the following offense:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Date Offense Concluded</u> | <u>Count Number(s)</u> |
|---|---|-----------------------------------|----------------------------|
| 18 U.S.C. §§ 1028(a)(2), 1028(b)(1)(A)(i) and 1028(c)(1) | Transferring False Identification Documents | March 26, 2014 | Three |

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Counts One, Two, and Four through Nine is dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:

May 7, 2015



VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

May 7, 2015

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IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of TWENTY-FOUR (24) MONTHS.

The Court recommends to the Bureau of Prisons that the defendant:

- Be confined at McRae CI in McRae Helena, Georgia.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THIRTY-SIX (36) MONTHS.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The mandatory drug testing requirements of the Violent Crime Control Act are waived. However, the Court orders the defendant to submit to random drug testing not to exceed 104 tests per year.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervision that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervision in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

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Guadalupe Avendano-Vasquez
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10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. the defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. Should the defendant be deported, he/she shall not be allowed to re-enter the United States without the express permission of the appropriate governmental authority.
2. The defendant shall cooperate in the collection of DNA, as directed by the Probation Officer.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments.

Total Assessment

\$100.00

Total Fine

Waived

Total Restitution

N/A

SCHEDULE OF PAYMENTS

Special assessment shall be paid in full and is due immediately.

FORFEITURE

Defendant shall forfeit to the United States those assets previously identified in the Indictment, Plea Agreement and Order of Forfeiture, that are subject to forfeiture.

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:14-cr-395-T-33TGW

GUADALUPE AVENDANO-VASQUEZ

FINAL JUDGMENT OF FORFEITURE

THIS CAUSE comes before the Court upon the United States' Motion for a Final Judgment of Forfeiture, pursuant to 21 U.S.C. § 853(n)(7) and Rule 32.2(c)(2), of the Federal Rules of Criminal Procedure for the following assets:

- a. An HP LaserJet Pro Color Printer, Serial Number CM1415CM1415FNW;
- b. An HP Pro Computer 3500, Serial Number MXL34212HM;
- c. A Dell Computer Tower, Serial Number 829N1R1;
- d. An HP Computer Tower, Serial Number 3CR217OWPP;
- e. A Laminating Machine, Serial Number 09091529;
- f. An Evolis Pebble 4card printer, Serial Number 10000166890;
- g. A Fargo Persona C30 printer, Serial Number A7380667;
- h. An HP DeskJet Printer/Scanner/Copier, Serial Number CN979412VW;
- i. A Kodak ESP 7250 printer, Serial Number CN1K670064538B1L04K1;
- j. An HP Office Jet Pro 8500 printer, Serial Number MY9AL411NP;
- k. A Brother Printer, Serial Number V62234KNJ208391;

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- l. Seven Cell Phones;
- m. Five digital cameras;
- n. Three miscellaneous thumb drives;
- o. Ten miscellaneous SD memory cards;
- p. Two Fargo Smart Load printer cartridges;
- q. Fourteen Evolis color printing ribbons;
- r. Six paper cutters;
- s. Two shredders;
- t. One box of card stock;
- u. One box of paper stock; and
- v. Corel Draw Graphics software.

On February 20, 2015, the Court entered a Preliminary Order of Forfeiture for the assets described above, pursuant to 18 U.S.C. § 982(a)(6)(A). Doc. 25.

The Court finds that in accordance with 21 U.S.C. § 853(n) and Rule 32.2(b)(6)(C), the United States published notice of the forfeiture and of its intent to dispose of the assets on the official government website, www.forfeiture.gov, from February 21, 2015 through March 22, 2015. Doc. 33. The publication gave notice to all third parties with a legal interest in the assets to file with the Office of the Clerk, United States District Court, Middle District of Florida, Sam Gibbons Federal Courthouse, 2nd Floor, 801 North Florida Avenue, Tampa, Florida 33602, a petition to adjudicate their interest within 60 days of the first date

of publication. No third party or entity has filed a petition or claimed an interest in the assets, and the time for filing such petition has expired.

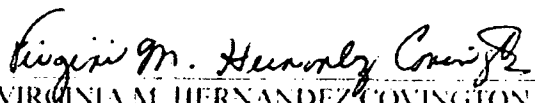
Accordingly, it is hereby:

ORDERED, ADJUDGED, and DECREED that for good cause shown, the United States' motion is GRANTED.

It is FURTHER ORDERED that pursuant to 21 U.S.C. § 853(n)(7) and Federal Rule of Criminal Procedure 32.2(c)(2), all right, title and interest in the assets identified above are CONDEMNED and FORFEITED to the United States for disposition according to law.

Clear title to the assets is now vested in the United States of America.

DONE and ORDERED in Tampa, Florida, this 22nd day of April, 2015.


VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Copies to:
Megan K. Kistler, AUSA
Counsel of Record

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