

IN THE SUPREME COURT OF THE UNITED STATES

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

Applicant hereby respectfully requests an extension of time to file a petition for a writ of certiorari. Applicant requests an extension until February 25, 2019.

The unpublished per curiam opinion of the United States Court of Appeals for the Eleventh Circuit, issued on September 27, 2018, is attached hereto as Attachment A. The petition is presently due on December 26, 2018.

A letter dated November 29, 2018, from the Executive Office for Immigration Review, U.S. Department of Justice, is attached hereto as Attachment B.

Applicant is requesting an extension because additional time is needed to prepare the petition for a writ of certiorari. The applicant was deported before counsel was appointed in the Eleventh Circuit in this case.

According to the Bureau of Prisons website, Mr. Avendano-Vasquez was released on June 29, 2016. In an email dated January 23, 2018, a probation officer

stated that “[o]ur records show that he was removed from the U.S. on 08/11/2016. However, I highly recommend you contact ICE. They are the ultimate authority on the matter.” Undersigned counsel has attempted to locate applicant, including by submitting a Freedom of Information Act request to the Executive Office for Immigration Review. It is the understanding of undersigned counsel that the probation offices do not keep track of defendants after they have been deported.

The Eleventh Circuit granted the Government’s motion to dismiss the appeal pursuant to the appeal waiver in the applicant’s plea agreement. Also, the court held that, to the extent that the applicant challenged his removal or related proceedings, the court lacked jurisdiction and dismissed in part his appeal for lack of jurisdiction.

The applicant was deported before the criminal appeal had been decided. There are questions relating to the appeal waiver and the impact of being deported before the appeal was concluded. These issues are not part of an immigration or removal proceeding, but are presented in this criminal appeal.

CONCLUSION

Wherefore, for the foregoing reasons, applicant respectfully requests that the time for filing a petition for a writ of certiorari be extended to February 25, 2019.

Respectfully submitted,



Elaine Mittleman, Esq.

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ATTACHMENT A

[DO NOT PUBLISH]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

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).

ATTACHMENT B



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 1903
Falls Church, Virginia 22041

November 29, 2018

Elaine Mittleman
Law Office of Elaine Mittleman
2040 Arch Drive
Falls Church, VA 22043

RE: Freedom of Information Act Request
GUADALUPE AVENDANO-VASQUEZ

Dear Elaine Mittleman:

This letter is in response to your Freedom of Information Act request for records related to GUADALUPE AVENDANO-VASQUEZ which was assigned control number 2018-48435.

You have indicated that you are the authorized representative of GUADALUPE AVENDANO-VASQUEZ. Under our regulations, we will generally release a photocopy of the record of proceedings with appropriate authorization. As such, we require more evidence for release of the record.

Such evidence may include a completed form DOJ-361 signed by your client. Alternatively, your client may provide the full name, current address, and date and place of birth and either (1) have your client's signature witnessed by a notary, or (2) include the following statement immediately above your client's signature: 'I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].'

If you do not submit such evidence within fifteen working days to the Executive Office for Immigration Review (EOIR), we will consider you to be a third-party requester of records and will respond accordingly. The information may be submitted to EOIR by regular mail at the address on the letterhead or electronically to EOIR.FOIAREQUESTS@USDOJ.GOV. Please reference the FOIA control number. If you have any questions, please contact me at (703) 605-1297.

Sincerely,

Sonya Dickerson

Sonya Dickerson

EOIR# 2018-48435