

No. _____

In the
Supreme Court of the United States

EFRAIN LEYVA HERNANDEZ,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

ANDREA RENEE ST. JULIAN
Counsel of Record
12707 High Bluff Dr., Ste. 200
San Diego, California 92130
(858) 792-6366
astjulian@san.rr.com

Counsel for Petitioner,
EFRAIN LEYVA HERNANDEZ

QUESTION PRESENTED

Does a district court violate a defendant's due process right to be sentenced based on accurate information and abuse its discretion when it imposes a lengthy sentence based on speculative inferences not supported by the record?

PARTIES TO THE PROCEEDINGS

The parties are petitioner, Efrain Leyva Hernandez, and respondent, United States of America. All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	2
A. Mr. Hernandez’s Background	3
B. The Facts Giving Rise to Mr. Hernandez’s Conviction, the Indictment, and Arrest	5
C. The Plea Agreement and Change of Plea	7
D. The Presentence Report and the Parties’ Sentencing Positions	9
1. The Office of Probation’s Presentence Report ..	9

2. The Government's Sentencing Position	12
3. Mr. Hernandez's Sentencing Position	14
E. Sentencing and the Notice of Appeal	15
 REASONS FOR GRANTING THE WRIT	17
 I. THE DECISION IN THIS MATTER IS CONTRARY TO DUE PROCESS BECAUSE IT ALLOWS THE IMPOSITION OF A SENTENCE BASED SPECULATIVE INFERENCES.	17
 CONCLUSION	21
 APPENDICES	
Appendix A March 12, 2020, Memorandum of the Ninth Circuit Court of Appeals	1a
Appendix B September 24, 2018, Judgment of U.S. District Court, Central District of California	4a

TABLE OF AUTHORITIES

CASES:

<i>Townsend v. Burke,</i> 334 U.S. 736 (1948)	18
<i>United States v. Alvarado-Martinez,</i> 556 F.3d 732 (9 th Cir. 2009)	18
<i>United States v. Berry,</i> 258 F.3d 971 (9 th Cir. 2001)	18
<i>United States v. Ibarra,</i> 737 F.2d 825 (9 th Cir. 1984)	19
<i>United States v. Kluball,</i> 843 F.3d 716 (7 th Cir. 2016)	18
<i>United States v. Littlesun,</i> 444 F.3d 1196 (9 th Cir. 2006)	18
<i>United States v. McGowan,</i> 668 F.3d 601 (9 th Cir. 2012)	19
<i>United States v. Sand,</i> 541 F.2d 1370 (9 th Cir. 1976)	19
<i>United States v. Tucker,</i> 404 U.S. 443 (1972)	19
<i>United States v. Vanderwerfhorst,</i> 576 F.3d 929 (9 th Cir. 2009)	19

<i>United States v. Watts,</i> 519 U.S. 148 (1997)	18
---	----

<i>United States v. Wilson,</i> 900 F.2d 1350 (9 th Cir. 1990)	18
--	----

CONSTITUTIONAL PROVISIONS, STATUTES, RULES, AND
SENTENCING GUIDELINES:

UNITED STATES CONSTITUTION

United States Constitution, Amendment V	2
---	---

FEDERAL STATUTES

28 U.S.C. § 455.	23
-----------------------	----

28 U.S.C. § 1254(1).....	1
--------------------------	---

18 U.S.C. § 3661.	19
------------------------	----

18 USC § 3553(a)(2).....	19-20
--------------------------	-------

U.S. SENTENCING GUIDELINES

U.S.S.G. § 6A1.3(a)	18
---------------------------	----

PETITION FOR WRIT OF CERTIORARI

Petitioner, Efrain Leyva Hernandez, respectfully prays that a writ of certiorari issue to review the judgment of the Ninth Circuit Court of Appeals, entered in the instant proceeding on March 12, 2020, Ninth Circuit Court of Appeal № 18-50356.

OPINIONS BELOW

The United States Court of Appeals for the Ninth Circuit issued an unpublished Memorandum decision in this matter. App. 1a. See United States v. Hernandez, 797 Fed.Appx. 382 (9th Cir. 2020)(unpublished). The district court order from which Mr. Hernandez appealed is also unpublished. App. 4a. See United States v. Hernandez, U.S. District Court, Eastern District of California № 2:17-cr-00005-SVW-21.

STATEMENT OF JURISDICTION

The date on which the Ninth Circuit Court of Appeals filed its Memorandum in the instant matter was March 12, 2020. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

STATEMENT OF THE CASE

A. Mr. Hernandez's Background

Hernandez was born in 1990, in Jungapeo, Michoacan, Mexico. His father, Rodrigo Hernandez and his mother Maria Leyva, live together in Jungapeo along with Mr. Hernandez's brother, Humberto. The family lives and works on a 60-acre farm raising cattle. PSRs¹ 16.

Mr. Hernandez's family was quite poor, living a subsistence lifestyle. PSRs 16. For much of his boyhood, the family lived in a single-room adobe house with no indoor plumbing. PSRs 16. Because his family did not have the money to send him to school, Mr. Hernandez only completed the Ninth Grade. PSRs 16-17. Mr. Hernandez helped on the farm, until he immigrated to the United States for economic reasons. PSR 39.

Upon arriving in the United States in 2008, Mr. Hernandez went to

¹Probation filed a Disclosed Recommendation letter, a Revised Disclosed Recommendation letter, two Presentence Reports, and an Addendum to the Revised Presentence Report. PSRs 1, 4, 22, 28, 45. These reports were combined into one document entitled "PSRs" and consecutively numbered. Thus, references to "PSRs" refers to the combined document and the consecutive page numbering.

Washington's Yakima Valley where an aunt previously had moved and found work in the apple orchards. PSRs 16, 18. There were plenty of ranches, and he consistently worked from the time he arrived. Eventually, Mr. Hernandez also found work as an automobile painter, and when the apple harvest was in season, he would work two jobs. PSRs 16. While in the United States, he always sent money back to his parents. PSRs 16.

In 2017, Mr. Hernandez married Flor Estrada. Mrs. Hernandez is a United States citizen who works with her mother running a day-care center. Mr. and Mrs. Hernandez have an infant daughter, making Mr. Hernandez a first-time father. PSRs 16, 48. Mr. Hernandez is a hard worker and family centered. PSRs 48.

ICE reported that Mr. Hernandez is a naturalized citizen. PSRs 16-17. In this regard, Mrs. Hernandez related that she and her husband hired an immigration attorney to file papers with ICE based on Mr. Hernandez's marriage to an American citizen. PSRs 16, 48.

B. The Facts Giving Rise to Mr. Hernandez's Conviction, the Indictment, and Arrest

On October 3, 2012, Mr. Hernandez met certain individuals in a parking lot in Pomona, California, to coordinate the sale of three kilograms of cocaine. On October 4, 2012, Mr. Hernandez and another individual transported a third individual and the three kilograms of cocaine to a bus terminal in Huntington Park, California, in order for this third individual to transport the cocaine to Yakima, Washington for further distribution. ER 62.

A year and a half after the initial transaction, on January 18, 2014, Mr. Hernandez engaged in a second one. He and another individual discussed Mr. Hernandez buying five kilograms of cocaine from a third individual, for \$24,200 per kilogram for further distribution. ER 63. On January 20, 2014, Mr. Hernandez drove to an individual's residence and transported \$125,000 in drug proceeds in that vehicle in order to pay for the five kilograms of cocaine. ER 63.

On January 5, 2017, the government filed an indictment against 21 defendants, listing Mr. Hernandez as the 21st defendant. ER 135. Mr. Hernandez was charged in Counts One and Five, Conspiracy to Distribute and to Possess with Intent to Distribute Controlled Substances (21 U.S.C. § 846), Possession with Intent to Distribute Cocaine (21 U.S.C. § 841(a)(1),(b)(1)(B)(ii)), and Aiding and Abetting (18 U.S. C. § 2(a)). ER 135,-136, 138, 144, 147, 151.

Mr. Hernandez was arrested in Washington state on or about April 26, 2017. ER 114. Thus, the arrest took place three and a half years after Mr. Hernandez's most recent alleged illegal activity occurred. PSRs 45. The Washington state district court detained Mr. Hernandez and, following an identity hearing, ordered him removed to the Central District of California. ER 119.

Mr. Hernandez initially appeared in the Central District of California on June 2, 2017. ER 110. The district court granted the government's request for detention. ER 104, 109, 110.

C. The Plea Agreement and Change of Plea

On March 5, 2018, Mr. Hernandez and the government entered into a plea agreement. Mr. Hernandez agreed, *inter alia*, to plead guilty to Count One of the Indictment, conspiracy to distribute and possess with intent to distribute controlled substances, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B)(ii). ER 58-59.

The government agreed to recommend a two-level reduction in the applicable Sentencing Guidelines offense level, pursuant to U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an additional one-level reduction if available under that section, provided that Mr. Hernandez demonstrated an acceptance of responsibility for the offense. It further agreed to move to dismiss the remaining count against Mr. Hernandez. ER 59.

The government agreed that Mr. Hernandez:

1. did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the

offense charged in Count One;

2. The offense charged in Count One did not result in death or serious bodily injury to any person; and,
3. Mr. Hernandez was not an organizer, leader, manager, or supervisor of others in the offense charged in Count One and was not engaged in a continuing criminal enterprise.

ER 64.

Mr. Hernandez waived the right to appeal his conviction, except for an appeal based on a claim that the guilty plea was involuntary. ER 65. He also agreed to a limited waiver of appeal which stated:

provided the Court imposes a term of imprisonment within or below the range corresponding to an offense level of 27 and the criminal history category calculated by the Court, defendant gives up the right to appeal all of the following: (a) the procedures and calculations used to determine and impose any portion of the sentence; (b) the term of imprisonment imposed by the Court; (c) the fine imposed by the court, provided it is within the statutory maximum; (d) the term of probation or supervised release imposed by the Court, provided

it is within the statutory maximum; and (e) any of the following conditions of probation or supervised release imposed by the Court: the conditions set forth in General Orders 318, 01-05, and/or 05-02 of this Court; the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

ER 66.

At the change of plea hearing, Mr. Hernandez pleaded guilty to Count One of the Indictment. ER 79, 100. The district court accepted the plea. ER 94, 100.

D. The Presentence Report and the Parties' Sentencing Positions.

1. The Office of Probation's Presentence Report

In advising the district court as to Mr. Hernandez's appropriate sentence, Probation filed a Disclosed Recommendation letter, a Revised Disclosed Recommendation letter, two Presentence Reports, and an Addendum to the Revised Presentence Report. PSRs 1, 4, 22, 28, 45.

Ultimately, the Office of Probation recommended a 57-month term of incarceration and two years of supervised release, based on following calculations:

Base Offense Level: 30
Guideline: § 2d1.1

Specific Offense Characteristics -2

Adjusted Offense Level 28

Acceptance of Responsibility -3

Total Offense Level 25

Criminal History Category I

Sentencing Options:

Guideline Sentence 57 to 71 Months (After

Application of Safety-valve)

Supervised Release 2 to 5 Years

PSRs 7, 22-23.

In calculating Mr. Hernandez's Total Offense Level, Probation

decreased Mr. Hernandez's points by 3, stating that he had "clearly" demonstrated acceptance of responsibility and that he had assisted authorities in its investigation and prosecution of the matter. PSRs 13.

Mr. Hernandez's low Criminal History Category was based on his minimal criminal history which included a 2009 arrest for driving under the influence when he was 18 years old, resulting in probation which ultimately terminated early. PSRs 13. Also, at the age of 20, Mr. Hernandez was fined for driving without a license. PSRs 13-15.

In making its recommendation of a sentence at the low end of the guidelines range, Probation noted, in mitigation, that the most recent activity for which Mr. Hernandez was charged took place three and a half years before his arrest. PSRs 38. Probation further indicated:

Hernandez's respect for the law appears higher than most similarly convicted defendants. Hernandez has one criminal history point from a DUI conviction. Hernandez was only 18 years old at the time of the incident. His other traffic convictions are fairly minor. Thus, with 'Safety Valve,' Hernandez benefits from his lack of criminal

history.

PSRs 25.

Probation concluded:

Congress has made it abundantly clear that drug crimes are to be punished harshly. The recommended sentence, 57 months, is quite a significant term for one who had only previously been held to a two-day jail sentence. The term should prove to meet the goals of sentencing.

PSRs 25.

2. The Government's Sentencing Position

In taking a sentencing position, the government did not object to Probation's calculations of Mr. Hernandez's offense level or criminal history category. The government believed that Mr. Hernandez qualified for safety-valve treatment because on September 6, 2018, he truthfully provided the government all information and evidence he had concerning the offense. ER 37. Consequently, the government recommended that Mr. Hernandez be sentenced to a total of 57 months of imprisonment, to be

followed by four years of supervised release. ER 33-34.

In recommending the low end of the guidelines range, the government stated:

Unlike some of his coconspirators, defendant has no history of drug or alcohol addiction. PSR ¶ 81.) He was raised in a supportive family. (PSR ¶¶ 67-70.) Defendant also could find steady employment. (PSR ¶ 88.) ¶ Finally, the government notes the presence of some mitigating factors. Defendant is the father of an infant daughter. (PSR ¶ 73.) He has a limited criminal history that includes no prior drug-related crime.

ER 38-39.

3. Mr. Hernandez's Sentencing Position

Mr. Hernandez filed a sentencing position memorandum explaining that a 24-month sentence is "sufficient but not greater than necessary" to achieve the purposes of sentencing as set forth in §3553(a)(2). ER 19. Alternatively, Mr. Hernandez requested a sentence at the low end of the guideline range which was 57 months. ER 25.

In making his request, Mr. Hernandez explained that he was not the "ringleader" of the conspiracy and that this contention was supported by the parties' agreement and the PSR, (safety valve eligible). Mr. Hernandez further explained that he merely acted as a mule. Prices and quantities of the drugs were negotiated by other members of the conspiracy. Hernandez merely delivered the money and then delivered the narcotics. ER 21. Mr. Hernandez was a family man who had never served time before. ER 22.

In support of his request for 24 months, Mr. Hernandez pointed out that:

The following co-defendants are listed by place in

the indictment and sentence received:

Jose Maria Ayala-Torres No. 10[,] 120 months
Juan Carlos Cardenas Gonzalez No. [,] 13- 30 months
Rumualdo Lozoya Villalobos No. 16[,] Time served

ER 26.

E. Sentencing and the Notice of Appeal

Mr. Hernandez's sentencing hearing took place on September 24, 2018. ER 3, 16. Mr. Hernandez again requested a 24-month term of incarceration. In so requesting, Mr. Hernandez pointed out that he was involved in only two overt acts, one occurred in 2012 and the other in 2014, which was three and a half years prior to Mr. Hernandez's arrest. ER. 4-5.

The district court found that Mr. Hernandez was safety-valve eligible. ER 7. Yet, it sentenced Mr. Hernandez to a 71-month term of incarceration and a two-year term of supervised release. ER. 6. In so doing, the district court stated:

. . . this was a serious crime and involved eight

kilograms of high-grade cocaine. The defendant had \$125,000 when he was about to purchase five of those kilograms of cocaine. He was a long-term participant in the conspiracy; I reject the argument that he was a low-level courier. Based upon the court's experience and the facts of this case, it appears that he had a position of responsibility. He may not have been an organizer or leader, but he had a position of some responsibility, and the crime was serious and over a substantial period of time.

ER 6.

On the government's motion, the district court dismissed the remaining count against Mr. Hernandez and advised, "[Mr. Hernandez] has a right to appeal the sentence." ER 7. On October 3, 2018, Mr. Hernandez filed a timely notice of appeal. ER 17.

On March 12, 2020, the Ninth Circuit Court of Appeals issued a memorandum decision in this matter. App. 1a

REASONS FOR GRANTING THE WRIT

I. THE DECISION IN THIS MATTER IS CONTRARY TO DUE PROCESS BECAUSE IT ALLOWS THE IMPOSITION OF A SENTENCE BASED SPECULATIVE INFERENCES.

Probation and the government recommended that the district court sentence Mr. Hernandez to 57 months of incarceration. ER 3-4, 33-34. Mr. Hernandez requested a term of imprisonment of 24 months, or alternatively 57 months. ER 19, 25, 33-34.

Despite the unanimous agreement that Mr. Hernandez's prison term should be no more than 57 months, the district court sentenced Mr. Hernandez to 71 months of incarceration based on the unsupported belief that Mr. Hernandez was a long-term participant in the conspiracy and that he held a position of responsibility within the drug organization. ER 7. Because the district court based Mr. Hernandez's sentence on speculation, it violated his due process right to be sentenced on accurate information.

Despite the wide ranging nature of information allowed at

sentencing, due process provides some limitation in that it requires a defendant be sentenced on the basis of accurate information. *United States v. Wilson*, 900 F.2d 1350, 1353 (9th Cir. 1990) citing *Townsend v. Burke*, 334 U.S. 736, 741 (1948). This accuracy requirement connotes information that is reliable. *United States v. Littlesun*, 444 F.3d 1196, 1199 (9th Cir. 2006); *United States v. Berry*, 258 F.3d 971, 976 (9th Cir. 2001). To similar effect, see U.S.S.G. § 6A1.3(a) which requires that information used in sentencing have "sufficient indicia of reliability to support its probable accuracy."

A defendant cannot be deprived of liberty based upon mere speculation. *United States v. Berry*, 553 F.3d 273, 284 (3d Cir. 2009); *United States v. Kluball*, 843 F.3d 716, 719 (7th Cir. 2016) holding that information is not reliable where it is based on speculation or unfounded allegations. To satisfy due process, facts that are considered at sentencing, as a general matter, must be proved by a preponderance of the evidence. *Berry*, 553 F.3d 273, 284 citing *United States v. Watts*, 519 U.S. 148, 156 (1997). See also *United States v. Alvarado-Martinez*, 556 F.3d 732, 734-35 (9th Cir. 2009).

The district court violates a defendant's due process rights when it relies on materially false or unreliable information at sentencing. See *United States v. Tucker*, 404 U.S. 443, 446 (1972); *United States v. Sand*, 541 F.2d 1370, 1378 (9th Cir.1976). To establish the violation of his due process right to be sentenced based on accurate information, a defendant must show that the asserted allegations were (1) false or unreliable, and (2) demonstrably made the basis for the sentence. *United States v. McGowan*, 668 F.3d 601, 606 (9th Cir. 2012) citing *United States v. Vanderwerfhorst*, 576 F.3d 929, 935-936 (9th Cir. 2009) and *United States v. Ibarra*, 737 F.2d 825, 827 (9th Cir. 1984).

The district court's belief that Mr. Hernandez was a long-term participant in the conspiracy and that he had a position of responsibility within the organization was nothing more than speculation. ER 7. The district court itself essentially admitted that there was insufficient information in the record to support the conclusions that it drew. In this regard, the district court openly stated that it came to its conclusions based on what it called, "the court's experience." ER 7. Despite this lack of

reliability, the district court demonstrably relied on its beliefs in sentencing Mr. Hernandez. ER 7. The Ninth Circuit Court of Appeals affirmed the district court's sentencing noting, "as long as information has 'some minimal indicium of reliability,' a district court does not violate due process by considering it at sentencing . . ." App 2a. The inferences on which the district court imposed sentence, however, were based, not on facts, but on the district court's speculative assertion of its "experience." The Ninth Circuit's decision thus violates due process and this violation warrants the grant of the instant petition for a writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: June 9, 2020

Respectfully submitted,



Andrea Renee St. Julian
Counsel of Record for Petitioner,
EFRAIN LEYVA HERNANDEZ

APPENDICES

APPENDIX A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAR 12 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

EFRAIN LEYVA HERNANDEZ, AKA
Soto,

Defendant-Appellant.

No. 18-50356

D.C. No. 2:17-cr-00005-SVW-21

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Steven V. Wilson, District Judge, Presiding

Submitted March 3, 2020**

Before: MURGUIA, CHRISTEN, and BADE, Circuit Judges.

Efrain Leyva Hernandez appeals from the district court's judgment and challenges the 71-month sentence imposed following his guilty-plea conviction for conspiracy to distribute and to possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1), and 846. We have jurisdiction under 28

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

U.S.C. § 1291, and we affirm.

Hernandez first argues that the district court violated his due process rights and abused its discretion by sentencing him based on inaccurate speculation that he was a long-term participant in the conspiracy and held a position of responsibility within the drug trafficking organization. This claim fails because the unchallenged information in the presentence report, upon which the district court was entitled to rely, *see United States v. Ameline*, 409 F.3d 1073, 1085 (9th Cir. 2005) (en banc), and Hernandez's admissions, supported the district court's inferences. *See United States v. Vanderwerfhorst*, 576 F.3d 929, 935-36 (9th Cir. 2009) (as long as information has "some minimal indicium of reliability," district court does not violate due process by considering it at sentencing (internal quotation marks omitted)).

Hernandez next contends that the sentence is substantively unreasonable. He argues that the district court failed to weigh the 18 U.S.C. § 3553(a) sentencing factors appropriately, including the need to avoid unwarranted sentencing disparities with his co-defendants. The district court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). Contrary to Hernandez's argument, the record reflects that the court considered the section 3553(a) factors, the mitigating circumstances, and the sentences given to some of his co-defendants. The within-Guidelines sentence is substantively reasonable in light of

the section 3553(a) factors and the totality of the circumstances. *See Gall*, 552 U.S. at 51; *see also United States v. Gutierrez-Sanchez*, 587 F.3d 904, 908 (9th Cir. 2009) (“The weight to be given the various factors in a particular case is for the discretion of the district court.”).

AFFIRMED.

APPENDIX B

United States District Court
Central District of California

UNITED STATES OF AMERICA vs.

Defendant Efrain Leyva Hernandez
akas: HERNANDEZ SOTO, RodrigoDocket No. 2:17-cr-00005-SVWSocial Security No. N O N E
(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH 09 DAY 24 YEAR 2018

COUNSEL

Fredrico McCurry

(Name of Counsel)

PLEA

 GUILTY, and the court being satisfied that there is a factual basis for the plea. NOLO NOT CONTENDERE GUILTY

FINDING

There being a finding/verdict of GUILTY, defendant has been convicted as charged of the offense(s) of:
Conspiracy to Distribute and Possess with Intent to Distribute Cocaine in violation of 21 U.S.C. §§ 846, 841(b)(1)(B) as charged in Count One of the IndictmentJUDGMENT
AND PROB/
COMM
ORDER

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of:

SEVENTY-ONE (71) MONTHS

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of two years under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation Office and General Order 05-02. The defendant shall comply with the rules and regulations of the United States Probation Office and General Order No. 05-02, with the exception of Conditions 5, 6, and 14 of that order.
2. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from custody and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer.
3. The defendant shall comply with the immigration rules and regulations of the United States, and if deported from this country, either voluntarily or involuntarily, not reenter the United States illegally. The defendant is not required to report to the Probation Office while residing outside of the United States; however, within 72 hours of release from any custody or any reentry to the United States during the period of Court-ordered supervision, the defendant shall report for instructions to the United States Probation Office located at: the United States Court House, 312 North Spring Street, Room 600, Los Angeles, California 90012.
4. The defendant shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification in any name, other than the defendant's true legal name, nor shall the defendant use, any name other than his true legal name without the prior written approval of the Probation Officer.
5. The defendant shall cooperate in the collection of a DNA sample from the defendant.

It is ordered that the defendant shall pay to the United States a special assessment of \$100, which is due immediately.

USA vs. Efrain Leyva HernandezDocket No.: 2:17-cr-00005-SVW

Pursuant to Guideline § 5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine.

All remaining counts are dismissed.

The defendant is advised of his rights on appeal.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

September 26, 2018

Date



STEPHEN V. WILSON, U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

September 26, 2018

Filed Date

By PMCruz
Deputy Clerk

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

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant shall not commit another Federal, state or local crime;
2. the defendant shall not leave the judicial district without the written permission of the court or probation officer;
3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5. the defendant shall support his or her dependents and meet other family responsibilities;
6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
10. 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;
11. 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;
12. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
13. 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;
14. 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 conform the defendant's compliance with such notification requirement;
15. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours;
16. and, for felony cases only: not possess a firearm, destructive device, or any other dangerous weapon.

The defendant will also comply with the following special conditions pursuant to General Order 01-05 (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant shall pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution-pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3563(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence (pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid):
 - Non-federal victims (individual and corporate),
 - Providers of compensation to non-federal victims,
 - The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663(c); and
5. Other penalties and costs.

SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure; and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

USA vs. Efrain Leyva Hernandez

Docket No.: 2:17-cr-00005-SVW

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____
Defendant noted on appeal on _____
Defendant released on _____
Mandate issued on _____
Defendant's appeal determined on _____
Defendant delivered on _____ to _____
at _____
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____

Date _____

Deputy Marshal _____

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____

Filed Date _____

Deputy Clerk _____

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant

Date

U. S. Probation Officer/Designated Witness

Date