

APPENDIX

2025 WL 2673907

Only the Westlaw citation is currently available.

United States Court of Appeals, Ninth Circuit.

UNITED STATES of
America, Plaintiff - Appellant,
v.
Juan VIANA-HERNANDEZ,
Defendant - Appellee.

No. 24-3084

FILED SEPTEMBER 18, 2025

Argued and Submitted August
19, 2025 Pasadena, California

Appeal from the United States District Court for
the Southern District of California, [Larry A. Burns](#),
District Judge, Presiding, D.C. No. 3:23-cr-02135-
LL-1

Attorneys and Law Firms

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- Appellee.

Before: [HIGGINSON](#), [BENNETT](#), and [SUNG](#),
Circuit Judges.*

MEMORANDUM**

*1 The Government appeals the district court's
order dismissing the charge against Defendant Juan
Viana-Hernandez with prejudice, after previously
allowing Viana-Hernandez to withdraw his guilty
plea. The district court stated it dismissed Viana-
Hernandez's case under its supervisory authority
because it concluded that the Bureau of Prisons (BOP)
improperly undermined the imposition of its lawful

sentence. We have jurisdiction under [28 U.S.C. § 1291](#).
We reverse and reinstate Viana-Hernandez's judgment
and sentence.

1. This case is not moot. “For a dispute to remain live
without being dismissed as moot, ‘[t]he parties must
continue to have a personal stake in the outcome of the
lawsuit.’ ” [Maldonado v. Lynch](#), 786 F.3d 1155, 1160–
61 (9th Cir. 2015) (alteration in original) (quoting
[Lewis v. Cont'l Bank Corp.](#), 494 U.S. 472, 478 (1990)).
The Government has a live interest in this case: the
reinstatement of Viana-Hernandez's guilty plea and
sentence. See [Garding v. Mont. Dep't of Corrs.](#), 105
F.4th 1247, 1255–56 (9th Cir. 2024) (discussing how
the state had an interest in a vacated judgment to avoid
a new trial).

2. The Government did not waive its objection
to the district court dismissing the charge against
Viana-Hernandez. The Government argued against the
dismissal. At the April 22, 2024, order to show cause
hearing, the district court noted “I've considered an
order to show cause why somebody shouldn't be held
in contempt. I think the best and most direct and
probably least offensive response to this is just to
dismiss the case. The Government wants to appeal,
have at it.” “[W]aiver is the ‘intentional relinquishment
or abandonment of a known right.’ ” [United States v.](#)
[Olano](#), 507 U.S. 725, 733 (1993) (quoting [Johnson](#)
[v. Zerbst](#), 304 U.S. 458, 464 (1938)). Looking at the
entirety of the record and the district court transcripts,
the Government did not waive its objection.

3. A district court's use of its supervisory powers
is reviewed for abuse of discretion. [United States v.](#)
[Simpson](#), 813 F.2d 1462, 1465 (9th Cir. 1987). The
district court abused its discretion by allowing Viana-
Hernandez to withdraw his plea and then dismissing
the charge against him. “We have accepted that ‘[a]ll
federal courts are vested with inherent powers enabling
them to manage their cases and courtrooms effectively
and to ensure obedience to their orders.’ ” [United](#)
[States v. W.R. Grace](#), 526 F.3d 499, 509 (9th Cir.
2008) (en banc) (quoting [Aloe Vera of Am., Inc. v.](#)
[United States](#), 376 F.3d 960, 964–65 (9th Cir. 2004)
(per curiam)). The Supreme Court has suggested
that a district court should invoke its supervisory
authority in limited circumstances such as “to preserve
judicial integrity by ensuring that a conviction rests

on appropriate considerations” or “to deter illegal conduct.” *United States v. Hasting*, 461 U.S. 499, 505 (1983).

“Whatever the scope of” the district court’s “‘inherent power,’ however, it does not include the power to develop rules that circumvent or conflict with the Federal Rules of Criminal Procedure.” *Carlisle v. United States*, 517 U.S. 416, 426 (1996). Federal Rule of Criminal Procedure (Rule) 11(e) requires that “[a]fter the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.” The set-aside did not occur on either direct appeal or collateral attack. The district court thus violated Rule 11(e).

*2 The district court based its dismissal on the BOP’s conduct. But here, the BOP expressed staffing and safety concerns at the Metropolitan Correction Center San Diego with letting Viana-Hernandez enter and exit the facility every weekend. The BOP offered placements in other facilities. While the district court may make recommendations, the BOP has “plenary control” over the location of confinement. *Tapia v. United States*, 564 U.S. 319, 331 (2011). Although the district court found that the BOP’s alternatives were unreasonable, the BOP’s actions were not improper, much less outrageous, and did not justify either allowing Viana-Hernandez to withdraw his plea or dismissing the charge against Viana-Hernandez. See *United States v. Gatto*, 763 F.2d 1040, 1046 (9th Cir. 1985) (“Proper regard for judicial integrity does not justify a ‘“chancellor’s foot” veto’ over activities of

coequal branches of government.” (quoting *United States v. Russell*, 411 U.S. 423, 435 (1973))).

The district court was concerned that the BOP’s alternate locations would effectively undermine its sentence of intermittent confinement. But there were other means available to the parties, and to the district court, to address changes in circumstance that may have permitted modifications to Viana-Hernandez’s sentence or to the terms of his probation. For example, the district court, under Rule 36, could have corrected an error in the judgment. Alternatively, Viana-Hernandez (or the Government) could have moved to modify the terms of Viana-Hernandez’s probation under Rule 32.1(c). Following the issuance of our mandate, the district court may find that conditions have changed, and/or other bases exist for exercising its discretion to modify the sentence, including through Rule 32.1(c) or Rule 36, and including based on the possible lack of an appropriate facility for intermittent confinement.

The district court abused its discretion under the Rules and the limits of its supervisory authority by dismissing the Government’s charge against Viana-Hernandez after permitting him to withdraw his guilty plea.

REVERSED AND REMANDED. Viana-Hernandez’s judgment and sentence are **REINSTATED.**

All Citations

Not Reported in Fed. Rptr., 2025 WL 2673907

Footnotes

* The Honorable Stephen A. Higginson, United States Circuit Judge for the U.S. Court of Appeals for the 5th Circuit, sitting by designation.

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