

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

NOE DE JESUS ARCE-HERNANDEZ

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
APPEALS FOR THE NINTH CIRCUIT

APPENDICES TO
PETITION FOR A WRIT OF CERTIORARI

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DATE SENT VIA United States Postal Service: June 30, 2026

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APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America

v.

Noe De Jesus Arce-Hernandez

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

No. CR-23-01722-002-PHX-DJH

Mark Thomas Rumold (AFPD)

Attorney for Defendant

USM#: 86575-510

THE DEFENDANT ENTERED A PLEA OF guilty on 10/23/2024 to Count 2 of the Indictment.

ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE(S): violating Title 21, U.S.C. §841(a)(1) and 841(b)(1)(C), Distribution of Methamphetamine, a Class C Felony offense, as charged in Count 2 of the Indictment.

IT IS THE JUDGMENT OF THIS COURT THAT the defendant is committed to the custody of the Bureau of Prisons for a term of **FORTY-TWO (42) MONTHS**, with credit for time served. Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THIRTY-SIX (36) MONTHS**.

IT IS FURTHER ORDERED that defendant's interest in the following property shall be forfeited to the United States: \$17,200 in U.S. currency, seized on November 8, 2023.

IT IS ORDERED that all remaining counts are dismissed on motion of the United States as to this defendant only.

CRIMINAL MONETARY PENALTIES

The defendant shall pay to the Clerk the following total criminal monetary penalties:

SPECIAL ASSESSMENT: \$100.00 FINE: WAIVED RESTITUTION: N/A

The Court finds the defendant does not have the ability to pay a fine and orders the fine waived.

The defendant shall pay a special assessment of \$100.00 which shall be due immediately.

If incarcerated, payment of criminal monetary penalties are due during imprisonment at a rate of not less than \$25 per quarter and payment shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, Attention: Finance, Suite 130, 401 West Washington Street, SPC 1, Phoenix, Arizona 85003-2118. Payments should be credited to the various monetary penalties imposed by the Court in the priority

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USA vs. Noe De Jesus Arce-Hernandez

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established under 18 U.S.C. § 3612(c). The total special assessment of \$100.00 shall be paid pursuant to Title 18, United States Code, Section 3013 for Count 2 of the Indictment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTa assessment, (9) penalties, (10) costs, including cost of prosecution and court costs.

Any unpaid balance shall become a condition of supervision and shall be paid within 90 days prior to the expiration of supervision. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the Clerk, U.S. District Court, of any change in name and address. The Court hereby waives the imposition of interest and penalties on any unpaid balances.

SUPERVISED RELEASE

The drug testing condition is suspended based on the Court's determination that the defendant will be deported.

It is ordered that while on supervised release, the defendant must comply with the mandatory and standard conditions of supervision as adopted by this court, in General Order 17-18, which incorporates the requirements of USSG §§ 5B1.3 and 5D1.2. Of particular importance, the defendant must not commit another federal, state, or local crime during the term of supervision. Within 72 hours of sentencing or release from the custody of the Bureau of Prisons the defendant must report in person to the Probation Office in the district to which the defendant is released. The defendant must comply with the following conditions:

MANDATORY CONDITIONS

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted.
- 3) You must refrain from any unlawful use of a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted. Unless suspended by the Court, you must submit to one drug test within 15 days of release and at least two periodic drug tests thereafter, as determined by the court.

STANDARD CONDITIONS

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of sentencing or your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside

without first getting permission from the court or the probation officer.

- 4) You must answer truthfully the questions asked by your probation officer.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
- 13) You must follow the instructions of the probation officer related to the conditions of supervision.

SPECIAL CONDITIONS

The following special conditions are in addition to the conditions of supervised release or supersede any related standard condition:

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1) If deported, you must not re-enter the United States without legal authorization.

THE COURT FINDS that you have been sentenced in accordance with the terms of the plea agreement and that you have waived your right to appeal and to collaterally attack this matter. The waiver has been knowingly and voluntarily made with a factual basis and with an understanding of the consequences of the waiver.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less than the authorized maximum, at any time during the period of probation or supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

The Court orders commitment to the custody of the Bureau of Prisons.

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

Date of Imposition of Sentence: **Tuesday, January 14, 2025**

Dated this 14th day of January, 2025.


Honorable Diane J. Humetewa
United States District Judge

RETURN

I have executed this Judgment as follows:

defendant delivered on _____ to _____ at _____, the institution
designated by the Bureau of Prisons with a certified copy of this judgment in a Criminal case.

United States Marshal

By: _____
Deputy Marshal

APPENDIX B

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 21 2026

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 25-558

Plaintiff-Appellee,

D.C. No.

v.

2:23-cr-01722-DHJ-2

NOE DE JESUS ARCE-HERNANDEZ,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Arizona

Diane J. Humetewa, District Judge, Presiding

Submitted January 8, 2026**
Phoenix, Arizona

Before: HAWKINS, RAWLINSON, and BRESS., Circuit Judges.

Noe De Jesus Arce-Hernandez (Arce-Hernandez) appeals the sentence imposed by the district court, following his guilty plea to one count of distribution of methamphetamine. Arce-Hernandez asserts his right to appeal despite the

* 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).

waiver in his plea agreement. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742, and we dismiss the appeal.

Arce-Hernandez entered into a valid plea agreement in which he waived his right to appeal “any aspect of [his] sentence.” However, Arce-Hernandez contends that the district court vitiated this waiver when it stated during a change of plea hearing that Arce-Hernandez was waiving his right to appeal “so long as [his] sentence complie[d] with the written terms of [his] plea agreement and the Sentencing Guidelines.” *See United States v. Nishida*, 53 F.4th 1144, 1149 (9th Cir. 2022) (reviewing de novo “whether the district court has vitiated a valid appeal waiver”) (citation omitted).

To vitiate an “otherwise valid appeal waiver,” a court’s oral pronouncements must be “unambiguous and without qualification.” *Id.* (reasoning that only “clear, unequivocal statements that contradict waiver, such as ‘you have the right to appeal findings which I make today regarding sentencing,’” vitiate a waiver) (citation omitted). The court’s pronouncement to Arce-Hernandez was not sufficiently “clear [and] unequivocal” to vitiate Arce-Hernandez’s waiver. *Id.* (explaining that “equivocal statements that do not directly conflict with waiver, such as ‘you may have a right to appeal the sentence,’” do not vitiate a waiver) (citation omitted).

APPEAL DISMISSED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 2 2026

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NOE DE JESUS ARCE-HERNANDEZ,

Defendant - Appellant.

No. 25-558

D.C. No.

2:23-cr-01722-DJH-2

District of Arizona,

Phoenix

ORDER

Before: HAWKINS, RAWLINSON, and BRESS, Circuit Judges.

The panel voted to deny the Petition for Panel Rehearing.

Judges Rawlinson and Bress voted to deny, and Judge Hawkins recommended denying, the Petition for Rehearing En Banc.

The full court has been advised of the Petition for Rehearing En Banc, and no judge of the court has requested a vote.

The Petition for Panel Rehearing and Rehearing En Banc, filed March 6, 2026, is DENIED.