

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

December 21, 2016

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE MARTIN MORELOS-HINOJOSA
a/k/a, Jose Martin Morales-Hinojosa,

Defendant - Appellant.

No. 16-1327
(D.C. No. 1:16-CR-00050-CMA-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **LUCERO**, **EBEL**, and **MATHESON**, Circuit Judges.

The government moves to enforce Jose Martin Morelos-Hinojosa's waiver of his right to appeal. The waiver is enforceable, so we grant the motion and dismiss this appeal.

Mr. Morelos-Hinojosa pled guilty to illegal reentry of a previously removed alien following an aggravated felony conviction and was sentenced to 24 months in prison. As part of the plea agreement, he waived the right to appeal his sentence

* This panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

unless it exceeded certain maximums or unless the government appealed. Neither of these happened, but Mr. Morelos-Hinojosa appealed his sentence anyway.

The government now moves to enforce the appeal waiver. This requires three conditions to be met: (1) the appeal must fall within the scope of the waiver, (2) the defendant must have knowingly and voluntarily waived his right to appeal, and (3) enforcing the waiver must not result in a miscarriage of justice. *United States v. Hahn*, 359 F.3d 1315, 1325 (10th Cir. 2004) (en banc) (per curiam). The government's motion addresses these conditions and explains why each is satisfied.

Mr. Morelos-Hinojosa's attorney informs the court that he sees no meritorious grounds to oppose the government's motion and that he explained this to Mr. Morelos-Hinojosa. We notified Mr. Morelos-Hinojosa of his attorney's position and invited him to file a response showing why the court should not enforce the waiver. He did not respond and the deadline to do so has passed.

After reviewing the record, we conclude the *Hahn* conditions are met and Mr. Morelos-Hinojosa's appeal waiver is enforceable. We therefore grant the motion to enforce the waiver and dismiss this appeal.

Entered for the Court
Per Curiam