

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**August 4, 2023**

**Christopher M. Wolpert**  
**Clerk of Court**

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UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

JOSE FELIPE HERNANDEZ-  
CALVILLO,

Defendant - Appellee.

No. 19-3210  
(D.C. No. 2:16-CR-20097-CM-5)  
(D. Kan.)

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UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

MAURO PAPALOTZI,

Defendant - Appellee.

No. 19-3211  
(D.C. No. 2:16-CR-20097-CM-6)  
(D. Kan.)

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**ORDER AND JUDGMENT\***

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Before **MATHESON, BALDOCK**, and **MORITZ**, Circuit Judges.

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In this case, a jury convicted Jose Hernandez-Calvillo and Mauro Papalotzi (together, Appellees) of conspiring to encourage or induce noncitizens to reside in

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

the United States, knowing or recklessly disregarding that such residence violates the law. *See* 8 U.S.C. § 1324(a)(1)(A)(iv), (v)(I). Before sentencing, however, the district court vacated the convictions and dismissed the indictments against Appellees, holding that the statute of conviction was unconstitutionally overbroad under the First Amendment. We agreed and affirmed, relying in part on the Ninth Circuit’s analysis in a case involving the same overbreadth issue. *See United States v. Hernandez-Calvillo*, 39 F.4th 1297, 1300, 1304–07, 1310–11 (10th Cir. 2022) (citing *United States v. Hansen*, 25 F.4th 1103 (9th Cir. 2022)).

Recently, the Supreme Court reversed the Ninth Circuit’s decision, holding that Appellees’ statute of conviction is not unconstitutionally overbroad. *United States v. Hansen*, 143 S. Ct. 1932, 1937 (2023). The Court has since vacated our decision in light of *Hansen*. *United States v. Hernandez-Calvillo*, No. 22-582, 2023 WL 4278439, at \*1 (U.S. June 30, 2023). Because *Hansen* conclusively rejects Appellees’ overbreadth challenge—the sole basis on which Appellees challenged their convictions—we vacate the district court’s order dismissing Appellees’ indictments and remand for further proceedings consistent with this order.

Entered for the Court

Nancy L. Moritz  
Circuit Judge