

DEC 16 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LORENA VIVINA RODRIGUEZ,

Defendant - Appellant.

No. 09-50488

D.C. No. 3:08-cr-03763-JLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submitted December 9, 2010**
Pasadena, California

Before: PREGERSON and CLIFTON, Circuit Judges, and HOLLAND, Senior
District Judge.***

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

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

*** The Honorable H. Russel Holland, Senior United States District Judge
for the District of Alaska, sitting by designation.

Rodriguez's appellate waiver is enforceable. The district court's oral pronouncement does not supersede the waiver. The district court merely stated that Rodriguez could contest whether her waiver was enforceable before an appellate court, not that Rodriguez could appeal her sentence on the merits. Further, the government objected to any suggestion by the district court that Rodriguez had a right to appeal. *See United States v. Buchanan*, 59 F.3d 914, 917-18 (9th Cir. 1995). The government did not breach the plea agreement by not recommending safety-valve relief because Rodriguez lied during her safety-valve debrief and in her subsequent proffer. *See United States v. Shrestha*, 86 F.3d 935, 939 (9th Cir. 1996). Rodriguez's argument that enforcement of the appellate waiver would result in a miscarriage of justice is nothing more than an attempt to have the court consider the merits of her appeal, which the court cannot do because she has waived her right to appeal.

DISMISSED.