

SEP 14 2012

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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NOT FOR PUBLICATION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.

FIDEL OSWALDO HERNANDEZ-  
PALENCIA, AKA Marvin Chavez-  
Valencia,

Defendant - Appellant.

No. 11-10004

D.C. No. 4:09-cr-00125-CKJ-  
BPV-1

MEMORANDUM\*

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

Cindy K. Jorgenson, District Judge, Presiding

Submitted September 10, 2012\*\*

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

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\* 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).

Fidel Oswaldo Hernandez-Palencia appeals his conviction by guilty plea and 60-month sentence for illegal reentry after deportation in violation of 8 U.S.C. § 1326, with a sentencing enhancement pursuant to 8 U.S.C. § 1326(b)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Hernandez-Palencia's attorney has filed a brief stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. A pro se supplemental brief has been filed, and the government has filed a motion to dismiss based on Hernandez-Palencia's appellate waiver.

Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80-81 (1988), discloses no arguable grounds for relief on direct appeal. We dismiss in light of the valid appeal waiver. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000).

Counsel's motion to withdraw is **GRANTED**.

**DISMISSED.**