

JUN 29 2015

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MAYEL PEREZ-VALENCIA, AKA
Santos Irizarry Castillo, AKA Miguel
Martinez, AKA Miguel Angel Martinez-
Marquez, AKA Miguelito, AKA Mayel
Valencia Perez,

Defendant - Appellant.

No. 13-50598

D.C. No. 2:11-cr-00442-PA-2

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted June 25, 2015**
San Francisco, California

Before: O'SCANNLAIN, TROTT, and CLIFTON, Circuit Judges.

* 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 proper time and opportunity for the disputed subpoena duces tecum to have been brought to the attention of this court was before we issued a second opinion deciding Perez-Valencia's appeal, or in a petition for rehearing. The mandate issued on April 29, 2014, leaving nothing to resolve. The matter is now moot. Nevertheless, counsel asks us in effect to withdraw our opinion and to permit him to start over in district court on a new factual record. We decline this inappropriate request.

In any event, looking beyond the defendant's forfeiture, the district court's decision quashing the subpoena was a proper exercise of discretion. See Fed. R. Crim. P. 17(c); United States v. George, 883 F.2d 1407, 1418 (9th Cir. 1989) (affirming the district court's decision to quash a subpoena that had the "“earmarks of a wild goose chase”").

DISMISSED.