NOT FOR PUBLICATION

FILED

OCT 30 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. YESMIN MISEAL MEDINA VARGAS, AKA Josh, Defendant - Appellant.	No. 25-3671 D.C. No. 3:23-cr-00296-IM-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Karin J. Immergut, District Judge, Presiding

Submitted October 28, 2026**
Seattle, Washington

Before: M. SMITH and CHRISTEN, Circuit Judges, and SYKES, District Judge.***

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 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 Sunshine Suzanne Sykes, United States District Judge for the Central District of California, sitting by designation.

Yesmin Miseal Medina Vargas entered into a plea agreement in which he pleaded guilty to conspiracy to distribute fentanyl in violation of 21 U.S.C. §§ 841(a)(l), (b)(l)(B)(vi), and 846. Vargas appeals from the district court's judgment and also challenges the 121-month sentence imposed following his guilty-plea conviction. Vargas argues that: (1) he did not knowingly and voluntarily waive his right to appeal; and (2) the district court plainly erred in conducting its plea colloquy under Federal Rule of Criminal Procedure 11(b)(1)(N). Vargas claims that the district court erred by applying a two-level leadership enhancement pursuant to the United States Sentencing Guidelines § 3B1.1(c). Because the parties are familiar with the facts, we do not recount them here except as necessary to explain our decision. We have jurisdiction to hear this appeal. *United States v. Jacobo Castillo*, 496 F.3d 947, 957 (9th Cir. 2007) (en banc).

We review de novo whether a defendant has validly waived his statutory right to appeal. *United States v. Lo*, 839 F.3d 777, 783 (9th Cir. 2016). "[A] defendant's waiver of his appellate rights is enforceable if (1) the language of the waiver encompasses his right to appeal on the grounds raised, and (2) the waiver is knowingly and voluntarily made." *United States v. Charles*, 581 F.3d 927, 931 (9th Cir. 2009) (citation omitted). When determining whether an appeal waiver was knowingly and voluntarily made, we look to "the circumstances surrounding

the signing and entry of the plea agreement," *United States v. Cope*, 527 F.3d 944, 949 (9th Cir. 2008) (citation omitted), and "ask what the defendant reasonably understood to be the terms of the agreement when he pleaded guilty." *United States v. Medina-Carrasco*, 815 F.3d 457, 461 (9th Cir. 2016) (citation modified).

The record shows that Vargas knowingly and voluntarily waived his right to appeal. Vargas was represented by counsel when he signed the plea agreement. Both Vargas and his counsel confirmed on the record that the plea agreement was translated into Spanish and that he reviewed the agreement with the assistance of a Spanish interpreter. Vargas signed the plea agreement and an advisal that confirmed he had carefully reviewed every part of the agreement with his attorney and understood and voluntarily agreed to its terms. The advisal further provided that Vargas expressly waived his rights to appeal as outlined in this agreement. These "circumstances surrounding the signing" of the appeal waiver support the conclusion that Vargas' waiver was knowing and voluntary. *See Lo*, 839 F.3d at 783.

The district court conducted a thorough Rule 11 plea inquiry. The court asked Vargas whether he understood that by signing the agreement he was giving up most, if not all, of his rights to appeal, to which Vargas unequivocally answered, "yes." The court then asked whether he had "discuss[ed] that paragraph carefully with [his] attorney." When Vargas responded, "not that much," the court

explained, "as long as I sentence you within the law, there are very limited issues that can come up that would allow you to appeal your sentence and conviction in this case." The court then once more asked whether Vargas had "review[ed] that well enough with your attorney so you understand it." Vargas answered: "Yes. I do understand it, more or less." This court has concluded that where a trial court: (1) explains to the defendant that he or she is giving up the right to appeal; (2) asks the defendant if they understand; and (3) receives verbal confirmation of understanding from the defendant, the record is "sufficient to find a knowing and voluntary waiver." *United States v. Watson*, 582 F.3d 974, 986–987 (9th Cir. 2009) (citing *United States v. Baramdyka*, 95 F.3d 840, 844 (9th Cir. 1996)). Here, we conclude the district court did not err in finding that "the waiver was knowingly and voluntarily made given the circumstances surrounding the agreement." *Id*. at 978.

The district court did not plainly err in conducting the Rule 11(b)(1)(N) plea colloquy; it fully complied with the Rule because it informed Vargas of the appeal waiver provision, confirmed that he had read the waiver paragraph and reviewed it with counsel, and confirmed that he understood it. *See Watson*, 582 F.3d at 987. Moreover, on this record, any Rule 11 error did not affect Vargas' substantial rights because he failed to show a reasonable probability that but for the Rule 11

error, he would not have entered the guilty plea. *See United States v. Kyle*, 734 F.3d 956, 963 (9th Cir. 2013).[1]

It is undisputed that Vargas' right to appeal the leadership enhancement was not preserved by any exception in the plea agreement. *Watson*, 582 F.3d at 988.

DISMISSED.

[1] The facts of this case do not satisfy the miscarriage of justice exception to appeal waivers recently recognized in *Hunter v. United States*, 608 U.S. 713, 727–28 (2026).