

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**

**For the Seventh Circuit  
Chicago, Illinois 60604**

Submitted October 24, 2023

Decided October 25, 2023

*Before*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2743

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

EPIGMENIO VAZQUEZ GATICA,  
*Defendant-Appellant.*

Appeal from the United States District  
Court for the Southern District of  
Indiana, Indianapolis Division.

No. 1:22CR00047-001

Richard L. Young,  
*Judge.*

**ORDER**

Epigmenio Vazquez Gatica pleaded guilty to sexually exploiting a minor in violation of 18 U.S.C. § 2251(a), (e), and the district court sentenced him to 300 months' imprisonment and 10 years' supervised release. His plea agreement contains a broad appeal waiver, but Vazquez Gatica nonetheless filed a notice of appeal. His appointed lawyer contends that the appeal is frivolous and moves to withdraw under *Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the nature of the appeal and addresses issues that an appeal of this kind might be expected to involve. Vazquez

Gatica did not respond to counsel's motion. *See* CIR. R. 51(b). Because counsel's analysis appears thorough, we focus on the subjects that he discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

"Person 1," who has not been publicly identified, gave Vazquez Gatica's cell phone and password to an Indianapolis police detective who was part of the FBI's Violent Crimes Against Children Task Force. A child had told Person 1 that Vazquez Gatica was lying on the floor of the bathroom while the minor was in the shower. The detective obtained a warrant to forensically examine the phone. The forensic team discovered videos of two minor girls in the bathroom, undressed. When officers confronted Vazquez Gatica with the videos, he demonstrated how he would record the children from behind a door. Officers later found other explicit content of these minors and a third child (a toddler-aged boy), stored in Vazquez Gatica's Google Drive folders. One of the minors was Vazquez Gatica's relative, and all of them were part of his household or otherwise in his custody and care.

Vazquez Gatica was arrested on a three-count criminal complaint, which included two charges of sexual exploitation of a minor and one count of possession of child pornography. Vazquez Gatica later waived indictment and agreed to plead guilty to a single-count information charging him with sexual exploitation of a minor. The plea agreement contained a factual basis for the offense of conviction and relevant conduct, and it set forth stipulated calculations of the offense level and criminal history under the Sentencing Guidelines. The agreement also contained an appellate waiver under which Vazquez Gatica relinquished his rights to directly appeal "all provisions of the guilty plea and sentence imposed," and to collaterally attack his conviction and sentence except as specified in the agreement.

The district court held a combined change-of-plea and sentencing hearing. After placing Vazquez Gatica under oath, the court engaged him in a colloquy through a translator. The court described the charge and maximum penalties, Vazquez Gatica's trial rights, the consequences of pleading guilty, and the role of the Sentencing Guidelines, including the court's discretion to choose the sentence notwithstanding the parties' recommendations. *See* FED. R. CRIM. P. 11(b). The court separately explained the appellate waiver, and Vazquez Gatica affirmed that he understood and agreed to that provision. After hearing and agreeing to the factual basis, Vazquez Gatica entered a plea of guilty, which the district court accepted.

During the sentencing phase of the hearing, the district court reviewed the final presentence investigation report, which had drawn no objections from either side. The

court calculated the total offense level under the Guidelines to be 43. *See* U.S.S.G. § 2G2.1; U.S.S.G. ch. 5, pt. A, cmt. n.2. With zero criminal history points, and thus a criminal history category of I, Vazquez Gatica faced a guidelines range of life imprisonment, reduced to the 360-month statutory maximum. *See* 18 U.S.C. § 2251(e); U.S.S.G. § 5G1.1(a). After hearing the parties' arguments and discussing the factors under 18 U.S.C. § 3553(a), the district court sentenced Vazquez Gatica to a 300-month prison term, reflecting a downward variance, and ten years' supervised release with conditions that Vazquez Gatica did not object to. The court also ordered restitution of \$9,000 to each victim.

Counsel first informs us that Vazquez Gatica has equivocated about whether he wishes to challenge his guilty plea, *see United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012), so counsel discusses whether any challenge would be frivolous. We agree with counsel that there would be no nonfrivolous basis to do so. Vazquez Gatica did not move in the district court to withdraw his plea, so we would review only for plain error. *United States v. Schaul*, 962 F.3d 917, 921 (7th Cir. 2020). The transcript of the plea colloquy reflects that the district court complied with the requirements of Rule 11(b), with minor exceptions. Under oath, Vazquez Gatica confirmed that he understood the charge, the penalties, and the rights he was waiving; he also affirmed that his plea was voluntary, not the product of coercion or given in exchange for a promise. Therefore, he could not establish that it was plain error for the court to credit his sworn statements. *See United States v. Collins*, 796 F.3d 829, 835 (7th Cir. 2015).

As counsel notes, the court did not expressly advise Vazquez Gatica that he could be denied citizenship or future admission. *See* FED. R. CRIM. P. 11(b)(1)(O). But we agree with counsel that this omission was harmless. The court explained orally that "pleading guilty may have consequences with respect to the defendant's immigration status" and that the charged crime was a removable offense. Further, the written plea agreement more specifically outlined the immigration consequences of his plea. *See United States v. Adams*, 746 F.3d 734, 746–47 (7th Cir. 2014). And Vazquez Gatica swore at his plea hearing that he had reviewed the entire agreement with counsel and a translator, understood it, and agreed to its terms. For the same reason, counsel explains, Vazquez Gatica could not have been prejudiced by the court omitting from the oral colloquy his waiver of certain collateral attacks. *See* FED. R. CRIM. P. 11(b)(1)(N). Therefore, it would be frivolous to argue that the district court plainly erred by accepting the plea.

Counsel next considers whether Vazquez Gatica could raise any nonfrivolous arguments about his sentence. We agree with counsel that the appeal waiver precludes any such challenge. An appeal waiver “stands or falls” with the underlying plea. *United States v. Sakellarion*, 649 F.3d 634, 639 (7th Cir. 2011). As we have explained, Vazquez Gatica lacks any nonfrivolous basis for contending that his guilty plea was not knowing and voluntary. Therefore, the appellate waiver is enforceable unless an exception applies. *See United States v. Brown*, 973 F.3d 667, 718 (7th Cir. 2020). As counsel explains, however, Vazquez Gatica’s 300-month prison sentence and 10-year term of supervised release do not exceed the statutory maximums of 360 months’ imprisonment, *see* 18 U.S.C. § 2251(e), and lifetime supervised release, *see* 18 U.S.C. § 3583(k). And the record establishes that the court did not consider any constitutionally impermissible factors. *Brown*, 973 F.3d at 718. We would thus enforce the appellate waiver with respect to any sentencing arguments.

We therefore GRANT counsel’s motion and DISMISS the appeal.