

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 22 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SIMON GUTIERREZ-CORTEZ, AKA Juan
Miguel Menchaco-Lopez,

Defendant-Appellant.

No. 18-50259

D.C. No. 3:17-cr-01652-LAB-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted November 18, 2019**

Before: CANBY, TASHIMA, and CHRISTEN, Circuit Judges.

Simon Gutierrez-Cortez appeals from the district court's judgment and challenges the 42-month sentence imposed following his guilty-plea conviction for attempted reentry of a removed alien, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Gutierrez-Cortez's counsel has filed a

* 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).

brief stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. Gutierrez-Cortez has filed a pro se supplemental brief, and the government has filed an answering brief.

Gutierrez-Cortez waived his right to appeal his sentence. Our independent review of the record pursuant to *Penon v. Ohio*, 488 U.S. 75, 80 (1988), discloses no arguable issue as to the validity of the waiver. *See United States v. Watson*, 582 F.3d 974, 986-88 (9th Cir. 2009). We accordingly dismiss the appeal except as to standard conditions four, five, and thirteen, which are unconstitutionally vague. *See United States v. Evans*, 883 F.3d 1154, 1162-64 (9th Cir.), *cert. denied*, 139 S. Ct. 133 (2018); *see also Watson*, 582 F.3d at 977 (an appeal waiver does not bar a constitutional challenge to a supervised release condition). We vacate supervised release conditions four, five, and thirteen and remand to the district court with instructions to impose whatever alternative conditions it deems appropriate.

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

DISMISSED in part; VACATED in part; REMANDED with instructions.