

1 **I. BACKGROUND**

2 On October 29, 2010, Petitioner attempted to enter the United States at the San
3 Ysidro, California, Port of Entry, by presenting a Lawful Permanent Resident card
4 belonging to someone else. Petitioner was arrested, and on November 1, 2010, he was
5 charged with Attempted Entry After Deportation in Violation of 8 U.S.C. 1326. On
6 November 23, 2010, Petitioner was charged in a single count information for the same
7 offense.

8 On or about December 4, 2010, Petitioner executed a written fast-track Plea
9 Agreement [Doc. 14] and on December 6, 2010, entered a guilty plea. In the Plea
10 Agreement, Petitioner waived all rights to appeal or collaterally attack his guilty plea.
11 This Court then sentenced Petitioner to 42 months in custody, followed by three years
12 of supervised release.

13 Petitioner now challenges his sentence on the ground that his counsel did not file
14 a notice of appeal of his conviction. For the following reasons, the Court will deny
15 Petitioner's challenge.

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17 **II. DISCUSSION**

18 Courts have repeatedly upheld the validity of appeal waivers finding that "public
19 policy strongly supports plea agreements." United States v. Navarro-Botello, 912 F.2d
20 318, 321 (9th Cir. 1990); see also Brady v. United States, 397 U.S. 742, 752 n. 10
21 (1970); United States v. Wiggins, 905 F.2d 51, 53 (4th Cir. 1990). Courts will enforce
22 an appeal waiver if (1) the waiver is knowingly and voluntarily made; and (2) the
23 waiver, by its terms, waives the right to appeal. United States v. Nunez, 223 F.3d 956,
24 958 (9th Cir. 2000). Because Petitioner's Plea Agreement includes an appellate and
25 collateral attack waiver, the Court must determine whether to enforce the waiver.

26 First, a valid waiver requires that the Petitioner agreed to its terms knowingly and
27 voluntarily. See id. A reviewing court looks to the circumstances that surround the
28 plea agreement's signing and entry to determine whether a defendant agreed to its

1 terms knowingly and voluntarily. See United States v. Baramdyka, 95 F.3d 840, 843
2 (9th Cir. 2000).

3 In the present case, Petitioner entered into the Plea Agreement with his
4 attorney's advice and consent and Petitioner represented that he fully understood the
5 agreement. (*Plea Agreement*, p. 1.) Petitioner also represented that his plea was
6 knowing and voluntary, and Petitioner represented that he was satisfied with his
7 attorney's performance. (*Id.*, ¶14.) Additionally, the transcript from Petitioner's plea
8 hearing confirms that he understood the agreement, and entered it knowingly and
9 voluntarily. (*See Opp.* [Doc. 21], Ex. 4 [Doc. 21-4] at pp. 4–5.) Thus, the Court
10 concludes that Petitioner knowingly and voluntarily agreed to waive his right to appeal
11 or collaterally attack his sentence.

12 Second, a valid waiver must also explicitly state that Petitioner is waiving his
13 right to appeal. See Nunez, 223 F.3d at 958. A reviewing court applies contract
14 principles, including the parol-evidence rule. See United States v. Ajugwo, 82 F.3d
15 925, 928 (9th Cir. 1996). Under the parol-evidence rule, a court enforces the
16 contract's plain language and does not look to "extrinsic evidence... to interpret... the
17 terms of an unambiguous written instrument." Wilson v. Arlington Co. v. Prudential
18 Ins. Co. Of Am., 912 F.2d 366, 370 (9th Cir. 1990). Here, the Plea Agreement
19 explicitly provides that in exchange for the Government's concessions in the
20 agreement,

21 defendant waives, to the full extent of the law, any right to appeal or
22 collaterally attack the guilty plea, conviction and sentence, including any
23 restitution order, unless the Court imposes a custodial sentence above the
24 greater of the high end of the guideline range recommended by the
Government pursuant to this agreement at the time of sentencing or
statutory mandatory minimum term, if applicable.

25 (*Plea Agreement*, ¶ 11.) Thus, the appeal waiver is valid as long as Petitioner's sentence
26 was not above Respondent's recommended high end of the guideline range or the
27 statutory mandatory minimum term. Because Petitioner's sentence of 42 months is
28 consistent with the terms of the Plea Agreement, Petitioner's collateral attack on his

1 sentence is barred. The Court is, therefore, prevented from granting the habeas relief
2 requested in the Petition.

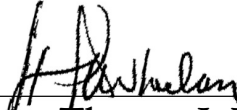
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III. CONCLUSION AND ORDER

In light of the foregoing, the Court **DENIES** the Petition [Doc. 17]. And because reasonable jurists would not find the Court’s assessment of the claims debatable or wrong, the Court **DENIES** a certificate of appealability. See Slack v. McDaniel, 529 U.S. 473, 484 (2000). The Clerk of the Court shall close the district court file.

IT IS SO ORDERED.

DATED: March 4, 2014



Hon. Thomas J. Whelan
United States District Judge