

FILED

JUN 16 2015

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EDGAR AVILA-NAJERA,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

) Cr. No. 11-3853GT

) Cv. No. 14-1376GT

) **ORDER**

On June 2, 2014, Petitioner, Edgar Avila-Najera (“Mr. Avila”), filed a Request For Relief And/Or Immediate Release/Deportation (“Request”). The Court has fully considered this matter, including a review of Mr. Avila’s brief filed, the authorities cited therein and the arguments presented. For the reasons stated below, Mr. Avila’s Request is **DENIED**.

First, Mr. Avila pled guilty, pursuant to a written plea agreement, to one count of Attempted Rentry, in violation of 8 U.S.C. § 1326(a) and (b). In the written plea agreement, Mr. Avila explicitly waived his right to appeal and/or collaterally attack his conviction or sentence, as well as his violation of supervised release. The Ninth Circuit has long acknowledged that the terms of a plea agreement are enforceable. *See, United States v. Baramdyka*, 95 F.3d 840, 843 (9th Cir. 1996), *cert. denied*, 117 S.Ct. 1282 (1997). Since Mr. Avila expressly waived his statutory right


1 to appeal or collaterally attack his sentence and his supervised release violation in his plea
2 agreement, Mr. Avila is now precluded from challenging that sentence or supervised release
3 violation pursuant to 28 U.S.C. § 2255. *See, United States v. Abarca*, 985 F.2d 1012, 1014 (9th
4 Cir. 1993) (holding that a knowing and voluntary waiver of a statutory right is enforceable).

5 Moreover, even if Mr. Avila had not expressly waived his right to appeal or collaterally
6 attack his sentence, his petition would still fail. In essence, Mr. Avila requests that his supervised
7 release violation be resolved immediately. However, his supervised release violation is in the
8 Central District of California and not the Southern District. This Court is without jurisdiction over
9 his supervised release. Additionally, his request for a reduction in his sentence because it is “harsh
10 and lengthy” is not sufficient to state a claim under § 2255. Accordingly,

11 **IT IS ORDERED** that Mr. Avila’s Request for Relief is **DENIED**.

12 **IT IS SO ORDERED.**

13
14 6-15-15
15 date

14
15 
16 GORDON THOMPSON, JR.
United States District Judge

17 cc: All parties
18
19
20
21
22
23
24
25
26
27
28