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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PEDRO MARTINEZ-TOMAS,

Defendant.

CASE NO. 15CR0108-LAB/
16CV0526-LAB

**ORDER DENYING MOTION UNDER
28 U.S.C. § 2255 [Doc. 22]**

Pedro Martinez-Tomas (“Martinez”) has filed a motion to vacate his sentence under 28 U.S.C. § 2255. On November 1, 2016, the Court appointed Federal Defenders of San Diego to represent Mr. Martinez, and offered Federal Defenders an opportunity to file a supplemental brief in support of Mr. Martinez’s claims by November 15, 2016. Federal Defenders did not file a supplemental brief. Also on November 1, the Court ordered the Government to respond to Mr. Martinez’s motion. On November 17, 2016, Assistant U.S. Attorney Susan Park filed a response opposing Martinez’s request for relief.

Ms. Park’s opposition brief points out that as part of his plea agreement Martinez waived the right to appeal or to collaterally attack his conviction, provided he received no more than 27 months in custody. He got the benefit of his bargain when the Court sentenced him to 27 months. Martinez’s plea agreement and the transcript of his change of plea establish that his waiver of the right to appeal and to collaterally attack his conviction

1 was knowing, voluntary, and intelligent. So the Court finds that the waiver is enforceable, and
2 forecloses the relief that Martinez seeks.

3 Even were the Court to consider Martinez's claim on the merits, his motion would be
4 denied. Martinez's argument is that his sentence was somehow undermined by the holding
5 in *Johnson v. United States*, ___ U.S. ___, 135 S.Ct. 2551 (2015), but the argument is
6 unsupported by any basis in that decision. In *Johnson*, the Supreme Court invalidated the
7 residual clause of the Armed Career Criminal Act ("ACCA") (18 U.S.C. § 924(e)) on the
8 ground that the clause was vague. 135 S.Ct. at 2557-58. Martinez was not sentenced under
9 the ACCA, nor under any other residual clause. He was sentenced under a specific provision
10 of the United States Sentencing Guidelines ("Guidelines") that provides for higher sentence
11 if an offender was previously convicted of alien smuggling – as Martinez was. Unlike the
12 defendant in *Johnson*, Martinez pled guilty to an offense that is explicitly defined and
13 referenced under the Guidelines; his argument about vagueness misses the mark.

14 Martinez's waiver of the right to collaterally attack his sentence is enforceable against
15 him, and he's got no legitimate beef in any event. His motion to vacate his sentence is
16 **DENIED.**

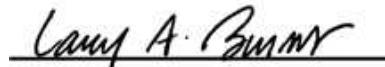
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18 **IT IS SO ORDERED.**

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20 DATED: March 17, 2017

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HONORABLE LARRY ALAN BURNS
United States District Judge

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