

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

SERGIO BAUTISTA MANZO,

Defendant.

CASE NO. 16cr638-LAB-1 and
17cv619-LAB

**ORDER DENYING MOTION UNDER 28
U.S.C. § 2255**

17 Defendant Sergio Bautista Manzo pled guilty to one count of importation of marijuana
18 and was sentenced to 30 months' imprisonment followed by three years' supervised release.
19 Under his plea agreement, he waived any right to appeal and collateral attack his conviction,
20 except for a collateral attack based on a claim of ineffective assistance of counsel. (Docket
21 no. 17 at 11:12–16.)

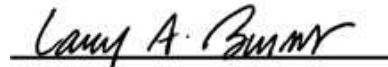
22 Bautista Manzo did not file an appeal, but he he filed a motion to vacate his
23 conviction, under 28 U.S.C. § 2255. He is not challenging the voluntariness of his plea, or
24 his counsel's effectiveness in advising him or allowing him to plead guilty. Instead, he argues
25 that his Fifth Amendment rights were violated when he was questioned at the border. He
26 argues that his confession was involuntary and thus inadmissible, and that his counsel was
27 ineffective for failing to make that argument. He also contends his counsel should have
28 pointed out inconsistencies in the prosecution's case.

1 Bautista Manzo's guilty plea waived all those alleged defects. *United States v. Davis*,
2 452 F.2d 577, 578 (9th Cir. 1971) ("[A] plea of guilty admits all averments of fact in the
3 indictment, all defects not jurisdictional are cured, all defenses are waived and the
4 prosecution is relieved from the duty of proving any facts."). Furthermore, his counsel was
5 not ineffective for failing to challenge admissibility of his confession, because there was no
6 trial and therefore no occasion to challenge admissibility.

7 The motion is **DENIED**.

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9 **IT IS SO ORDERED.**

10 DATED: April 3, 2017

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12 HONORABLE LARRY ALAN BURNS
13 United States District Judge
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