

UNITED STATES COURT OF APPEALS March 28, 2017

TENTH CIRCUIT

**Elisabeth A. Shumaker
Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JIMMY JOEL
HERNANDEZ-BANEGA, a/k/a Jimmy
Cruz, a/k/a Jimmy Diaz, a/k/a Jimmy
Diaz-Cruz,

Defendant - Appellant.

No. 16-1061
(D.C. No. 1:15-CR-00329-WYD-1)
(D. Colo.)

ORDER

Before **HOLMES, MURPHY, and PHILLIPS**, Circuit Judges.

Defendant-Appellant Jimmy Joel Hernandez-Banega challenges his twenty-month term of imprisonment and three-year period of supervised release. He argues that the district court improperly applied a twelve-level sentencing enhancement under U.S. Sentencing Guidelines § 2L1.2(b)(1)(B).

On March 15, 2017, however, the government filed a notice advising our court that Mr. Hernandez-Banega was deported to Honduras following completion of the custodial portion of his sentence. Although Mr. Hernandez-Banega remains legally subject to a term of supervised release, his deportation means that

he “has no obligation to report to a probation officer and is not under the supervision or control of the United States Probation Office.” *United States v. Vera-Flores*, 496 F.3d 1177, 1181 (10th Cir. 2007). Mr. Hernandez-Banega’s removal has therefore “eliminated all practical consequences associated with serving a term of supervised release,” *id.* at 1181, and he has no “actual injury which this court can remedy,” *id.* at 1182. Similarly, Mr. Hernandez-Banega “has failed to demonstrate the presence of collateral consequences arising from any alleged errors the . . . district court made during [his] sentencing proceeding.” *Id.* And the mere possibility of his reentry (along with the attendant revival of his obligation to comply with his supervised-release conditions) is too speculative to avoid dismissal for mootness. *See id.* at 1181–82.

Accordingly, Mr. Hernandez-Banega’s removal has rendered this appeal moot. *See id.* at 1182 (dismissing an appeal on mootness grounds following deportation); *see also United States v. Pena-Flores*, 240 F. App’x 281, 283 (10th Cir. 2007) (same), *cert. denied*, 552 U.S. 1281 (2008). Therefore, this appeal is **DISMISSED**.

Entered for the Court,



ELISABETH A. SHUMAKER, Clerk