

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-50396
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 29, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GUMARO ALMANZA,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:15-CR-359-1

Before KING, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Gumaro Almanza pleaded guilty, pursuant to a written plea agreement, to conspiracy to possess with intent to distribute 50 grams or more of methamphetamine. He was sentenced within the Guidelines to 168 months of imprisonment, to be followed by five years of supervised release. The plea agreement contained an appeal waiver provision, which the Government now seeks to enforce. Almanza, however, contends that the waiver is ineffective

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 16-50396

because the Government fraudulently induced him to enter a plea agreement that erroneously indicated he might be eligible for safety valve relief. Therefore, Almanza argues, the Government breached the plea agreement and this court should correct errors in the special conditions of his supervised release.

There is no indication of fraudulent inducement in this case. Under the circumstances here, the Government could not determine whether the district court would reach the legal conclusion that Almanza was ineligible for safety valve relief. *See United States v. Bautista-Montelongo*, 618 F.3d 464, 466 (5th Cir. 2010). Moreover, the record does not show that the Government made any promise (other than those in the plea agreement), threat, misrepresentation or otherwise improperly induced Almanza to enter into the plea agreement. Almanza knowingly and voluntarily entered the plea agreement without any improper inducement. *United States v. McKinney*, 406 F.3d 744, 746 (5th Cir. 2005).

Accordingly, the appeal is DISMISSED.