

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

United States Court of Appeals
Fifth Circuit

FILED

December 17, 2019

Lyle W. Cayce
Clerk

No. 18-11515

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FERMIN HERRERA-ANGELES,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:18-CR-56-1

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Fermin Herrera-Angeles pleaded guilty to one count of transportation of an illegal alien within the United States for private financial gain. For the first time on appeal, he challenges the imposition of a special condition of supervised release requiring him to “abstain from the use of alcohol and all other intoxicants” during his three-year term of supervision. The record, which establishes that Herrera-Angeles has never used alcohol or drugs, does not

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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support the condition, and we vacate the condition as plainly erroneous. *See* 18 U.S.C. § 3583(d); *United States v. Alvarez*, 880 F.3d 236, 239–42 (5th Cir. 2018).

As asserted by Herrera-Angeles, the judgment also contains a clerical error that should be corrected concerning the statute of conviction. *See* FED. R. CRIM. P. 36. The judgment indicates that the statute of conviction was 18 U.S.C. § 1324(a)(1)(A)(ii) and (a)(1)(B)(i), when it should be 8 U.S.C. § 1324(a)(1)(A)(ii) and (a)(1)(B)(i).

Accordingly, we VACATE the special condition of supervised release prohibiting the use of alcohol and all other intoxicants and REMAND for the district court to correct the statute of conviction in the judgment and to modify the special conditions of Herrera-Angeles’s supervised release in a manner consistent with this opinion. In all other respects, the judgment is AFFIRMED.