

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-3053

September Term, 2020

FILED ON: April 27, 2021

UNITED STATES OF AMERICA,
APPELLEE

v.

ALFREDO MOSQUERA-MURILLO, ALSO KNOWN AS ALFREDO LOPEZ-GUTIERREZ,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:13-cr-00134-BAH-3)

Before: TATEL, MILLETT, and KATSAS, *Circuit Judges*.

J U D G M E N T

The court considered this appeal on the record from the United States District Court and the briefs of the parties. *See* D.C. CIR. R. 34(j). The panel has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). It is hereby

ORDERED AND ADJUDGED, that the sentence of the district court be **VACATED** and that the case be **REMANDED** for resentencing consistent with this court's opinion in *United States v. Moreno-Membache*, No. 19-3051.

Appellant Mosquera-Murillo entered a guilty plea under a plea agreement that contains language nearly identical to that at issue in *Moreno-Membache*. In particular, the plea agreement includes the same ambiguous language concerning the government's ability to argue the defendant's ineligibility for Safety Valve relief, 18 U.S.C. § 3553(f), on the basis of an asserted leadership or managerial status under Sentencing Guidelines Section 3, Part B. *Compare* J.A. 119–125 (Mosquera-Murillo's plea agreement), *with* J.A. 130–136 (Moreno-Membache's plea agreement). Because the government breached the plea agreement in this case in the same manner as it did in *Moreno-Membache*, we vacate Mosquera-Murillo's sentence and remand for resentencing on all issues, untainted and unaffected by the government's arguments and evidence pertaining to Mosquera-Murillo's asserted supervisory or managerial role in the conspiracy.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy

Deputy Clerk