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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. DARIN LUIS AYALA, Defendant - Appellant.	No. 07-50444 D.C. No. CR-06-02620-LAB MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Darin Luis Ayala appeals from the district court's denial of his motion to

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

SR/Research

suppress evidence. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Ayala contends that the district court erred when it denied his motion to suppress certain evidence. However, when Ayala entered an unconditional guilty plea, he waived the right to appeal the denial of his suppression motion. *See Tollett v. Henderson*, 411 U.S. 258, 267 (1973); *United States v. Lopez-Armenta*, 400 F.3d 1173, 1175 (9th Cir. 2005). We therefore do not address the merits of Ayala's suppression claim. *See Lopez-Armenta*, 400 F.3d at 1175; *see also United States v. Cortez*, 973 F.2d 764, 766-69 (9th Cir. 1992).

We also reject Ayala's contention that he did not knowingly waive his right to appeal the denial of his motion to suppress and that the waiver is not enforceable. *See Cortez*, 973 F.2d at 768-69; *see also United States v. Jacobo Castillo*, 496 F.3d 947, 954 (9th Cir. 2007) (en banc) (reaffirming that preclusive effect of an appeal waiver may turn on whether appellant entered into an intelligent and knowing unconditional plea); *Lopez-Armenta*, 400 F.3d 1176-77.

Ayala contends that, based on an error of law, we should adopt a "miscarriage of justice exception" to the enforcement of valid appeal waivers. We have never adopted a "miscarriage of justice exception," and making an "exception" here based on an alleged error of law that took place prior to entry of

the guilty plea would be contrary to the well-established rule that an unconditional guilty plea not only waives the right to appeal all nonjurisdictional antecedent rulings, but cures all antecedent constitutional defects. *See Lopez-Armenta*, 400 F.3d at 1175.

AFFIRMED.