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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS E. QUINTEROS,

Defendant and Appellant.

E062848

(Super.Ct.No. RIF131806)

OPINION

APPEAL from the Superior Court of Riverside County. Steven G. Councilis,  
Judge. Affirmed.

Zulu Ali and Mohammad Iranmanesh for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, and Charles C. Ragland,  
Brendon W. Marshall, and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff  
and Respondent.

Defendant and appellant Luis E. Quinteros appeals the denial of his postjudgment motion to vacate a 2006 conviction for possession of cocaine and driving with a suspended license. Defendant contends that he was not properly advised of the immigration consequences of his guilty plea. (Pen. Code, § 1016.5.<sup>1</sup>) We affirm.

### I. FACTS AND PROCEDURAL BACKGROUND

On August 14, 2006, defendant was charged in a felony complaint with possession of cocaine (Health & Saf. Code, § 11350, subd. (a); count 1) and driving with a suspended license (Veh. Code, § 14601.5, subd. (a); count 2). That same day, he entered into a plea agreement. Prior to pleading guilty to both charged offenses, defendant initialed numerous boxes on the plea form, including the following:

**“B. CONSEQUENCES OF PLEA** (1 through 5 apply to everyone): [¶] . . . [¶]

3. If I am not a citizen of the United States, I understand that this conviction may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. [¶] . . . [¶]

**C. DEFENDANT’S STATEMENT:** [¶] . . . [¶] 4. I have had adequate time to discuss with my attorney (1) my constitutional rights, (2) the consequences of any guilty plea, and (3) any defenses I may have to the charges against me.” (Original boldface.)

At the end of the plea form, defendant signed on the line designated for the defendant, which stated immediately above the signature line: “I have read and understand this entire document. I waive and give up all of the rights that I have

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

initialed. I accept this Plea Agreement.” Defendant’s attorney then signed on the signature line designated for the defense counsel, which stated immediately above the signature line: “I am the attorney for the defendant. I am satisfied that (1) the defendant understands his/her constitutional rights and understand[s] that a guilty plea would be a waiver of these rights; (2) the defendant has had an adequate opportunity to discuss his/her case with me, including any defenses he/she may have to the charges; and (3) the defendant understands the consequences of his/her guilty plea. I join in the decision of the defendant to enter a guilty plea.” Lastly, an interpreter signed the plea form on the signature line designated for an interpreter which stated immediately above the signature line: “Having been duly sworn, I have translated this form to the defendant in the \_\_\_\_\_ language. The defendant has stated that he/she fully understood the contents of the form prior to signing.”

Immediately before accepting the plea, the trial court, via a translator, advised defendant of the “charges and consequences of his/her plea and statutory sentencing,” and found that defendant “knows and understands [his] constitutional rights, nature of charges and consequences of plea.” The trial court placed defendant on probation for three years.

On August 14, 2014, eight years after pleading guilty, defendant moved to vacate his conviction on the ground he had not been properly warned of the immigration consequences that would follow his plea and conviction. Denying the motion, the court found that defendant had not exercised due diligence and was adequately advised of the immigration consequences.

## II. DISCUSSION

The Attorney General argues that the motion to vacate is untimely. We agree. A motion to vacate a plea due to lack of advisement under section 1016.5 must be brought within a reasonable time. (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 203-204.) Defendant fails to explain why he waited eight years to bring the motion.

On the merits, the trial court did not abuse its discretion in denying the motion. (*Zamudio, supra*, 23 Cal.4th at p. 192.) “To prevail on a motion to vacate under section 1016.5, a defendant must establish that (1) he or she was not properly advised of the immigration consequences as provided by the statute; (2) there exists, at the time of the motion, more than a remote possibility that the conviction will have one or more of the specified adverse immigration consequences; and (3) he or she was prejudiced by the nonadvisement. [Citations.]” (*People v. Totari* (2002) 28 Cal.4th 876, 884.) The record demonstrates that defendant was properly advised that immigration consequences may follow his plea.

Defendant complains that he was not advised that judicial recommendations against deportation (JRADs) are no longer permitted. (See *People v. Paredes* (2008) 160 Cal.App.4th 496, 498-499 [retroactive change in federal law curtailing use of JRADs did not result in violation of plea agreement].)<sup>2</sup> In enacting section 1016.5, the Legislature

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<sup>2</sup> “[T]itle 8 United States Code former section 1251(b) authorized courts, including state courts, to issue ‘recommendations,’ against deportation. Such recommendations had the legal effect of precluding the federal government from deporting a defendant on the basis of a conviction for an offense that was otherwise deportable.” (*People v. Paredes, supra*, 160 Cal.App.4th at p. 501, fn 3.)

intended that trial courts advise defendants about the “potential adverse immigration consequences.” (*Zamudio, supra*, 23 Cal.4th at p. 209.) Defendant cites no authority that the trial court must advise him on what offenses will result in mandatory deportation. (See e.g., *People v. Gutierrez* (2003) 106 Cal.App.4th 169, 174, fn. 4 (*Gutierrez*) [no obligation to advise on immigration consequences that defendant may suffer other than the ones listed in section 1016.5]; *People v. Barocio* (1989) 216 Cal.App.3d 99, 105 [no obligation to advise on right to request a JRAD under 8 U.S.C. former § 1251(b)(2).]

Nonetheless, defendant contends that his plea form gave “general and generic information” regarding his plea, failing to “address the special immigration consequences,” such as the “unavailability of certain relief like cancellation of removal or asylum, which he was divested of due to the conviction in this case.” It is well established that “a validly executed waiver form is a proper substitute for verbal admonishment by the trial court. [Citation.]” (*People v. Ramirez* (1999) 71 Cal.App.4th 519, 521; see *Gutierrez, supra*, 106 Cal.App.4th at p. 175 [court may rely on executed form]; see also *People v. Quesada* (1991) 230 Cal.App.3d 525, 536 [“Nor need the statutory admonition be given orally. It is sufficient if, as here, the advice is recited in a plea form and the defendant and his counsel are questioned concerning that form to ensure that defendant actually reads and understands it.”], superseded by statute as stated in *People v. Totari* (2003) 111 Cal.App.4th 1202, 1207 and fn. 5.) The advisement need not be in the exact language of section 1016.5 and can be in writing. Substantial compliance is all that is required. (*Zamudio, supra*, 23 Cal.4th at pp. 207-208; *Gutierrez, supra*, at p. 174.)

A defendant who moves to set aside his plea based on an incomplete section 1016.5 advisement must show prejudice, i.e., that but for the failure to advise, defendant would not have entered a guilty plea. (*Zamudio, supra*, 23 Cal.4th at pp. 209-210.) Defendant states that he would never have agreed to accept the plea had he known he was subject to mandatory deportation. Defendant's declaration is self-serving and not corroborated. (*In re Resendiz* (2001) 25 Cal.4th 230, 253-254 [defendant's self-serving statement not sufficient to show prejudice]; *In re Alvernaz* (1992) 2 Cal.4th 924, 938 [defendant's self-serving statement of prejudice must be corroborated independently by objective evidence].) He makes no showing that, had he been differently advised of the immigration consequences of the plea, he would have insisted on a trial. (*People v. Totari, supra*, 28 Cal.4th at p. 884 [defendant must show reasonable probability he would have not pled guilty if properly advised].) "While it is true that by insisting on trial [defendant] would for a period have retained a theoretical possibility of evading the conviction that rendered him deportable and excludable, it is equally true that a conviction following trial would have subjected him to the same immigration consequences." (*In re Resendiz, supra*, at p. 254.)

Defendant's reliance on *Padilla v. Kentucky* (2010) 559 U.S. 356 is misplaced. In that case, the United States Supreme Court held that the Sixth Amendment requires defense counsel to inform noncitizen clients of the deportation risks of guilty pleas. (*Padilla v. Kentucky, supra*, at p. 367.) *Padilla* does not apply to defendants whose convictions, like defendant's, became final prior to *Padilla*. (*Chaidez v. United States* (2013) \_\_ U.S. \_\_, \_\_ [133 S.Ct. 1103, 1107-1113, 185 L.Ed.2d 149, 162].) "Section

1016.5 addresses only the trial court's duty to advise, not counsel's, and provides a specific remedy for that particular failure." (*People v. Chien* (2008) 159 Cal.App.4th 1283, 1288 [trial court lacked jurisdiction to address claim of ineffective assistance of counsel in the context of a section 1016.5 motion].)

In short, defendant's untimely motion to vacate was properly denied; both on procedural grounds and on the merits.

### III. DISPOSITION

The court's order denying the motion to vacate defendant's 2006 conviction is affirmed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P. J.

MCKINSTER

J.