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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NOT FOR PUBLICATION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.

ANTONIO ESPARZA-PEREZ,

Defendant - Appellant.

No. 09-50213

D.C. No. 3:08-cr-02522-LAB

MEMORANDUM\*

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

Submitted February 16, 2010\*\*

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Antonio Esparza-Perez appeals from the district court's order denying his motion to dismiss the indictment charging him with attempted entry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

28 U.S.C. § 1291, and we affirm.

Esparza-Perez contends that his prior deportation was invalid because an immigration judge failed to advise him that he might be eligible for discretionary relief under section 212(c) of the Immigration and Nationality Act. The record reflects that Esparza-Perez was not prejudiced by any defect in his prior deportation proceeding. *See United States v. Gonzalez-Valerio*, 342 F.3d 1051, 1054 (9th Cir. 2003). Specifically, the district court properly concluded that he failed to establish a plausible ground for relief because the evidence he submitted was outweighed by, among other factors, his prior conviction for lewd and lascivious acts upon his minor stepdaughter. *See id.* 1056-57.

**AFFIRMED.**