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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p>v.</p> <p>DAVID ANTONIO ESCOBAR-MENJIVAR,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 10-10059

D.C. No. 2:09-cr-00017-PMP

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

David Antonio Escobar-Menjivar appeals from his conviction for being a deported alien found unlawfully in the United States, in violation of 8 U.S.C.

§ 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291. We may affirm on

* 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).

any ground supported by the record. *See United States v. Tello*, 600 F.3d 1161, 1167 n.6 (9th Cir. 2010). We affirm.

Escobar-Menjivar contends that the district court erred in denying his motion to dismiss the indictment because the prior removal alleged in the indictment was the product of a fundamentally unfair deportation proceeding. On appeal, Escobar-Menjivar argues that he was not adequately advised of possible eligibility for relief from removal pursuant to 8 U.S.C. § 1229c(a). The contention fails because Escobar-Menjivar cannot demonstrate prejudice from any alleged due process violation, as he was previously permitted to voluntarily depart.

See 8 U.S.C. § 1229c(c); *see also United States v. Gonzalez-Valerio*, 342 F.3d 1051, 1054 (9th Cir. 2003) (holding that district court should have denied motion to dismiss an 8 U.S.C. § 1326 indictment where the defendant failed to show prejudice resulting from due process violation in deportation proceedings).

AFFIRMED.