

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 15 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VICTOR MANUEL DIAZ-OZUNA,

Defendant - Appellant.

No. 09-10435

D.C. No. 4:08-cr-00739-RCC-
CRP-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding

Argued and Submitted April 12, 2011
Pasadena, California

Before: REINHARDT, HAWKINS, and GOULD, Circuit Judges.

Victor Manuel Diaz-Ozuna (“Diaz”) appeals his conviction for illegal reentry after a prior deportation, in violation of 8 U.S.C. § 1326, arguing the district court violated his Sixth Amendment right of confrontation when it admitted a Certificate of Nonexistence of Record (“CNR”) to prove the lack of consent to reentry element

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

without providing for cross-examination of the certifying officer. The government concedes that admission of the CNR was erroneous under *United States v. Orozco-Acosta*, 607 F.3d 1156, 1161 & n.3 (9th Cir. 2010), *cert. denied*, 131 S. Ct. 946 (Jan. 10, 2011). Nonetheless, the conceded error was rendered harmless beyond a reasonable doubt by other substantial evidence confirming Diaz's lack of permission to enter the United States. *See id.* at 1162.

AFFIRMED.