

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 01 2011

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CANDELARIO CANO-GOMEZ,

Defendant - Appellant.

No. 10-10506

D.C. No. 3:10-cr-00052-MHP-1

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, Senior District Judge, Presiding

Argued and Submitted October 11, 2011
San Francisco, California

Before: HUG, KLEINFELD, and W. FLETCHER, Circuit Judges.

Candelario Cano-Gomez appeals the district court's denial without first holding an evidentiary hearing of his motion to dismiss the indictment for illegal reentry following his 2004 deportation in violation of 8 U.S.C. § 1326(a). Cano-

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

Gomez failed to “allege facts with sufficient definiteness, clarity, and specificity to enable the trial court to conclude that contested issues of fact exist[ed].” United States v. Howell, 231 F.3d 615, 620 (9th Cir. 2000); see also United States v. Zone, 403 F.3d 1101, 1106 (9th Cir. 2005) (affirming denial of motion to dismiss indictment without evidentiary hearing because defendant “ha[d] not presented any evidence [to support his allegation] of undue coercion” by federal authorities). Accordingly, the district court did not abuse its discretion in declining to hold an evidentiary hearing before dismissing Cano-Gomez’s motion to dismiss. See United States v. Schafer, 625 F.3d 629, 635 (9th Cir. 2010) (denial of evidentiary hearing reviewed for abuse of discretion).

AFFIRMED