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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NOT FOR PUBLICATION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>Plaintiff - Appellee,</p> <p>v.</p> <p>JOSE ESCOBAR-GAMEZ,</p> <p>Defendant - Appellant.</p>

No. 10-50367

D.C. No. 3:09-cr-01330-JLS-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submitted December 19, 2011**

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

Jose Escobar-Gamez appeals from his conviction and sentence for reentry of removed alien under 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, and we dismiss the appeal.

* 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).

We review de novo whether an appellant has waived his right to appeal. *United States v. Smith*, 389 F.3d 944, 953 (9th Cir. 2004) (per curiam). The terms of the appeal waiver in Escobar-Gamez's plea agreement clearly encompass this appeal from his conviction and his sentence to the low end of the Sentencing Guidelines range. *See id.* The record also plainly shows that the waiver was knowing and voluntary. *See id.* We therefore dismiss this appeal. *See id.*

We decline to address Escobar-Gamez's claim of ineffective assistance of counsel on direct appeal. *See United States v. McKenna*, 327 F.3d 830, 845 (9th Cir. 2003).

DISMISSED.