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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NOT FOR PUBLICATION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 - Appellant,</p> <p>v.</p> <p>LUIS FERNANDO SALAS-RIVERA,</p> <p>Defendant - Appellee.</p>
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No. 10-50595

D.C. No. 3:09-cr-04427-H-1

MEMORANDUM*

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

Argued and Submitted April 11, 2012
Pasadena, California

Before: FERNANDEZ and SILVERMAN, Circuit Judges, and BLOCK, Senior District Judge.**

The government appeals the district court’s grant of a new trial in this case.

Fed. R. Crim. P. 33(a) allows the district court to grant a new trial “if the interest of justice so requires.” We review the district court’s grant of new trial for an abuse

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

** The Honorable Frederic Block, Senior United States District Judge for the Eastern New York, sitting by designation.

of discretion. *United States v. Kellington*, 217 F.3d 1084, 1094-95 (9th Cir. 2000).

We affirm the grant of a new trial because the district court acted within its discretion in concluding that the expert testimony was unduly prejudicial under Fed. R. Evid. 403 and likely resulted in a miscarriage of justice.

AFFIRMED.