

APR 23 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE LUIS CASTILLO,

Defendant - Appellant.

No. 11-50259

D.C. No. 3:10-cr-05124-BEN

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted April 16, 2013**

Before: CANBY, IKUTA, and WATFORD, Circuit Judges.

Jose Luis Castillo appeals from the district court’s judgment and challenges his guilty-plea conviction for transportation of illegal aliens and aiding and abetting, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii), (v)(II). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Castillo contends that his plea was not entered knowingly, intelligently, and voluntarily in light of his inaudible responses at the change of plea hearing and his impaired mental state. Contrary to the government's argument, the appeal waiver in Castillo's plea agreement does not bar our consideration of his claim. *See United States v. Portillo-Cano*, 192 F.3d 1246, 1250 (9th Cir. 1999) (reaching defendant's claim that the plea was involuntary, despite appeal waiver, because "waivers of appeal must stand or fall with the agreement of which they are a part") (internal quotations omitted). Nevertheless, Castillo's claim fails.

We review the voluntariness of a plea de novo. *See United States v. Forrester*, 616 F.3d 929, 934 (9th Cir. 2010). Notwithstanding the portions of the transcript of the change of plea hearing that are marked "inaudible," the record reflects that Castillo's plea was knowing, voluntary, and intelligent. Moreover, the record reflects that any mental health issues that Castillo may suffer did not impair his ability to enter a knowing plea.

AFFIRMED.