

JUL 18 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSUE MICHEL,

Defendant - Appellant.

No. 12-50285

D.C. No. 3:11-cr-02586-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 June 3, 2013
Pasadena, California

Before: TROTT and W. FLETCHER, Circuit Judges, and STEIN, District
Judge.**

Defendant Josue Michel appeals from the district court's denial of his
motion to dismiss under 8 U.S.C. § 1326(d). 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 Honorable Sidney H. Stein, District Judge for the U.S. District
Court for the Southern District of New York, sitting by designation.

The government has the burden to prove an alien is removable by “clear and convincing evidence.” *Estrada v. INS*, 775 F.2d 1018, 1020 (9th Cir. 1985). “[A]n alien’s concession of removability or admission of facts establishing removability, if accepted by the [Immigration Judge], completely ‘relieves the government of the burden of producing evidence.’” *Pagayon v. Holder*, 675 F.3d 1182, 1189 (9th Cir. 2011) (per curiam) (alteration omitted) (quoting *Perez-Mejia v. Holder*, 663 F.3d 403, 416 (9th Cir. 2011)). But an alien’s concession of removability may not prevent a later challenge to the removal order if the concession was legally erroneous. *Perez-Mejia*, 663 F.3d at 416–17.

Here, Michel conceded during the “pleading stage” of his removal hearing that he was removable on both grounds listed in the Notice to Appear. *See id.* at 414 (citing 8 C.F.R. § 1240.10(c)). Because Michel’s concessions were legally correct, at least as to the aggravated felony ground, the government was relieved of its burden of producing evidence. *See id.* at 415; *Pagayon*, 675 F.3d at 1189. The Immigration Judge accepted Michel’s concessions and found him removable. As a result, Michel cannot demonstrate that the entry of his removal order was “fundamentally unfair” as required under § 1326(d)(3).

AFFIRMED.