

SEP 24 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NOT FOR PUBLICATION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 - Appellant,

v.

ORTENCIA SEGURA-SEGURA,

Defendant - Appellee.

No. 12-10600

D.C. No. 3:12-cr-00063-RCJ-
VPC-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, Chief District Judge, Presiding

Submitted September 11, 2013**
San Francisco, California

Before: ALARCÓN and BERZON, Circuit Judges, and ZOUHARY, District
Judge.***

* 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).

*** The Honorable Jack Zouhary, District Judge for the U.S. District
Court for the Northern District of Ohio, sitting by designation.

The United States appeals the dismissal of Ortencia Segura-Segura's indictment on the ground of selective prosecution. Such a dismissal can only be sustained by "clear evidence" that "(1) other similarly situated individuals have not been prosecuted and (2) [the defendant's] prosecution was based on an impermissible motive." *United States v. Sutcliffe*, 505 F.3d 944, 954 (9th Cir. 2007) (internal quotation marks omitted). Here, *no* evidence supports selective prosecution, let alone "clear evidence." The dismissal is thus **REVERSED** and the case **REMANDED** to the district court to reinstate the indictment.