

JUN 18 2015

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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NOT FOR PUBLICATION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>PACIANO LIZARRAGA-TIRADO, AKA Pasiano Lizarraga-Tirado,</p> <p>Defendant - Appellant.</p>

No. 13-10530

D.C. No. 4:13-cr-00213-FRZ-
LAB-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, Senior District Judge, Presiding

Argued and Submitted April 14, 2015
San Francisco, California

Before: **KOZINSKI** and **GRABER**, Circuit Judges, and **PONSOR**,** Senior
District Judge.

1. Defendant didn't object to the alleged instances of prosecutorial
misconduct, so we review for plain error. Any error was not "plain" because the

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

** The Honorable Michael A. Ponsor, Senior District Judge for the U.S.
District Court of Massachusetts, sitting by designation.

prosecutor's passing reference to his interview with Agent Nunez and his statement that the case was "memorable" for Agent Garcia weren't "clear or obvious" prosecutorial misconduct. United States v. Anguiano-Morfin, 713 F.3d 1208, 1211 (9th Cir. 2013).

2. The district court didn't abuse its discretion in admitting evidence of multiple prior removals. "[P]roving that the defendant has been previously removed is an essential element" of a section 1326 conviction, and the government may introduce evidence of multiple removals "to hedge the risk that the jury may reject the offered proof of one [removal], but not the other." United States v. Martinez-Rodriguez, 472 F.3d 1087, 1091 (9th Cir. 2007).

AFFIRMED.