

MAR 25 2008

MOLLY DWYER, ACTING 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NOT FOR PUBLICATION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.

HERMILIO VENCIS CARDOSO, aka
Jesus Morales-Mena; et al.,

Defendant - Appellant.

No. 06-10392

D.C. No. CR-05-00205-JAT

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James A. Teilborg, District Judge, Presiding

Submitted March 18, 2008**

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Hermilio Vencis Cardoso appeals his jury trial conviction for attempted
illegal re-entry after deportation, in violation of 8 U.S.C. § 1326. We have

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

** The panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

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jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Cardoso contends that the district court erred by failing to instruct the jury that he must be found not guilty if the jury determines he had a reasonable mistaken belief about whether he had the consent of the Attorney General to re-enter the country. We review the denial of a requested jury instruction, based on an inadequate factual foundation, for an abuse of discretion. *United States v. Wills*, 88 F.3d 704, 715 (9th Cir. 1996). Because there was insufficient evidence to sustain Cardoso's "mistaken belief" theory, the district court did not abuse its discretion when it denied Cardoso's jury instruction request. *See United States v. Jackson*, 726 F.2d 1466, 1468 (9th Cir. 1984).

AFFIRMED.