

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

NOV 28 2007

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE MARTIN SOTO,

Defendant - Appellant.

No. 07-30011

D.C. No. CR-06-02076-AAM

MEMORANDUM\*

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

Appeal from the United States District Court  
for the Eastern District of Washington  
Alan A. McDonald, District Judge, Presiding

Argued and Submitted November 7, 2007  
Seattle, Washington

Before: CANBY, GRABER, and GOULD, Circuit Judges.

Defendant Jose Martin Soto appeals his conviction for possession of methamphetamine with intent to distribute, 21 U.S.C. § 841(a), alleging errors in the jury instructions. We affirm.

1. The district court did not commit reversible error by declining to give a requested end-of-trial jury instruction that the jury could draw no adverse

---

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

inference from Defendant's failure to testify. See United States v. Castaneda, 94 F.3d 592, 596 (9th Cir. 1996) (stating that de novo review applies). We previously rejected the argument that the failure to give a "no adverse inference" instruction constituted reversible error under identical relevant facts, id., and Defendant has not offered any meaningful distinction between this case and Castaneda. During voir dire in this case, the court did instruct the jury pool that, if Defendant exercised the right not to testify, the jury was forbidden to allow that choice to affect its decision.<sup>1</sup>

2. The district court did not plainly err when instructing the jury on the government's burden of proof. See United States v. Lopez, 477 F.3d 1110, 1113 (9th Cir.) (stating that plain error review applies when a defendant neither proposed nor objected to a jury instruction), cert. denied, 128 S. Ct. 131 (2007). "[T]aken as a whole, the instructions . . . correctly convey[ed] the concept of reasonable doubt to the jury," indeed emphasizing the proper burden of proof many times, and there is no "reasonable likelihood that the jury understood the instructions to allow conviction based on proof insufficient to meet the

---

<sup>1</sup> We need not reach the government's alternative argument that the requested instruction was procedurally barred.

requirements of due process." Ramirez v. Hatcher, 136 F.3d 1209, 1211 (9th Cir. 1998) (alterations and internal quotation marks omitted).

**AFFIRMED.**