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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NOT FOR PUBLICATION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>RAFAEL MORA-ORTIZ,</p> <p>Defendant - Appellant.</p>

No. 05-50852

D.C. No. CR-04-02113-BTM

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Barry T. Moskowitz, District Judge, Presiding

Submitted March 18, 2008**

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

Rafael Mora-Ortiz appeals from his conditional guilty-plea conviction for illegal re-entry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 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 panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Appellant's request for oral argument is denied.

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Mora-Ortiz contends that the district court erred by failing to dismiss his indictment for illegal re-entry because his predicate deportation and subsequent reinstatement of deportation violated his due process rights. This contention fails because, even assuming Mora-Ortiz exhausted his administrative remedies, he did not demonstrate that he had a plausible ground for relief from deportation, and consequently cannot establish prejudice. *See United States v. Gonzalez-Valerio*, 342 F.3d 1051, 1056-57 (9th Cir. 2003).

AFFIRMED.