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**CATHY A. CATTERSON, 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NOT FOR PUBLICATION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.

DAVID HUMBERTO CALDERON-
PEREZ,

Defendant - Appellant.

No. 06-10552

D.C. No. CR-04-02399-DCB-02

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted November 13, 2007**

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

David Humberto Calderon-Perez appeals his conviction for conspiracy to possess with intent to distribute marijuana, in violation of 21 U.S.C. §§ 841(a)(1),

* 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).

(b)(1)(B)(vii) and 846; possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(vii); and use of a firearm during and in connection with a drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A)(i). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Calderon-Perez contends that the Government violated his due process rights when it failed timely to produce a transcript of a witness's grand jury testimony prior to that witness testifying at trial. Because the grand jury testimony was not favorable to the defendant, and not material as to credibility or guilt, Calderon-Perez's due process rights were not violated. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Benn v. Lambert*, 283 F.3d 1040, 1052-53 (9th Cir. 2002). To the extent that Calderon-Perez contends that the Government violated the Jencks Act and the Federal Rules of Criminal Procedure, his claim is unsupported by the text of the statute and rules, respectively. *See* 18 U.S.C. § 3500; Fed. R. Crim. P. 26.2.

AFFIRMED.