

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

DEC 11 2007

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NOE ORGAZ-VEGA,

Defendant - Appellant.

No. 06-50465

D.C. No. CR-04-03111-TJW

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Thomas J. Whelan, District Judge, Presiding

Argued and Submitted October 16, 2007  
Pasadena, California

Before: FERNANDEZ and WARDLAW, Circuit Judges, and COLLINS\*\*,  
District Judge.

Noe Orgaz-Vega appeals his conviction for being a deported alien found in

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

the United States pursuant to 8 U.S.C. § 1326.

Orgaz-Vega contends the district court erred in five ways with regard to the Prosecution's closing arguments and testimony of the Orgaz-Vega's parole officer. Some of the errors were objected to; others were not. The parties are familiar with the arguments and they need not be described in this memorandum.

“We review whether closing argument constitutes misconduct *de novo*.” *United States v. Perlaza*, 439 F.3d 1149, 1169, n.22 (9th Cir. 2006) (Although *Perlaza* cites *Santiago*, *Santiago* does not actually support the proposition). If the error is of constitutional magnitude, we must reverse unless the error was harmless beyond a reasonable doubt. *Id.* at 1171. If the error is not of constitutional magnitude, we must reverse unless “it is more probable than not that the error did not materially affect the verdict.” *United States v. Mitchell*, 172 F.3d 1104, 1111 (9th Cir. 1999). We conclude that even if the asserted errors were of a constitutional magnitude, they were harmless beyond a reasonable doubt.

Additionally, the prosecutor's misstatement of facts did not prejudice the jury and, if there was prejudice, the court's routine jury instructions remedied any prejudice. *See United States v. Lopez-Alvarez*, 970 F.2d 583, 598 (9th Cir. 1992).

A district court's evidentiary rulings are reviewed for abuse of discretion. *United States v. Fleming*, 215 F.3d 930, 938 (9<sup>th</sup> Cir. 2000). The district court did

not abuse its discretion when it allowed the Defendant's witness, a former probation officer, to testify on cross-examination that information given by family members potentially could or could not result in a lower sentence and that a probation report is prepared after a person is convicted of a crime.

Therefore, the district court's ruling is **AFFIRMED**.