

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
June 4, 2010

No. 09-40587
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

OSVALDO CEBALLOS-ZUNIGA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:08-CR-616-1

Before BENAVIDES, PRADO, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Osvaldo Ceballos-Zuniga (Ceballos) has appealed his jury conviction of illegal reentry following deportation in violation of 8 U.S.C. § 1326. Ceballos argues that, under the Supreme Court's recent decision in *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009), the district court's admission of a certificate of nonexistence of record (CNR), to show that Ceballos had not applied for admission to the United States, violated his rights under the Confrontation Clause of the Sixth Amendment.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

As Ceballos concedes, this court's review is for plain error. *See United States v. Martinez-Rios*, 595 F.3d 581, 584 (5th Cir. 2010). Because there was ample other evidence that Ceballos had not applied for admission to the United States, Ceballos cannot show that the district court's error in admitting the CNR affected his substantial rights. *See id.* at 587. The judgment is

AFFIRMED.