

APR 28 2015

MOLLY C. DWYER, 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NOT FOR PUBLICATION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.

FLAVIO GUTIERREZ RUBIO,

Defendant - Appellant.

No. 14-50181

D.C. No. 3:13-cr-03103-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted April 22, 2015**

Before: GOODWIN, BYBEE, and CHRISTEN, Circuit Judges.

Flavio Gutierrez Rubio appeals from the district court's judgment and challenges the 36-month sentence imposed following his guilty-plea conviction for importation of methamphetamine, in violation of 21 U.S.C. §§ 952 and 960. We have jurisdiction under 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Gutierrez Rubio contends that the district court erred in denying his request for a minor role adjustment under U.S.S.G. § 3B1.2(b) by failing to conduct a full inquiry into the applicability of the adjustment, and by misapplying the Guideline. We review the district court's interpretation of the Guidelines de novo, its application of the Guidelines to the facts of the case for abuse of discretion, and its factual determination that a defendant is not a minor participant for clear error. *See United States v. Hurtado*, 760 F.3d 1065, 1068 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 1467 (2015). Contrary to Gutierrez Rubio's contention, the record reflects that the district court conducted an individualized analysis of his role in the offense, understood and applied the correct legal standard, properly considered the totality of the circumstances, and did not rely on improper factors in denying the adjustment. *See* U.S.S.G. § 3B1.2 cmt. n.3(A), (C); *Hurtado*, 760 F.3d at 1068-69. Moreover, the district court did not clearly err by finding that Gutierrez Rubio did not play a minor role in the offense. *See Hurtado*, 760 F.3d at 1069.

AFFIRMED.