

APR 16 2010

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NOT FOR PUBLICATION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.

ALEJANDRA TAPIA,

Defendant - Appellant.

No. 09-50248

D.C. No. 3:08-CR-00249-BTM

MEMORANDUM*

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

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Alejandra Tapia appeals from the 51-month sentence imposed following her jury-trial conviction for bringing in an illegal alien for financial gain, in violation of 8 U.S.C. § 1324(a)(2)(B)(ii), bringing in an illegal alien without presentation, in

* 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).

violation of 8 U.S.C. § 1324(a)(2)(B)(iii), aiding and abetting, in violation of 18 U.S.C. § 2, and bail jumping, in violation of 18 U.S.C. § 3146. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Tapia contends that the district court committed plain error by basing her 51-month sentence on speculation about whether and when Tapia could enter and complete the Bureau of Prison's 500-hour drug abuse treatment program. No reversible error was committed. *See United States v. Duran*, 37 F.3d 557, 561 (9th Cir. 1994); *see also United States v. Waknine*, 543 F. 3d 546, 554 (9th Cir. 2008).

AFFIRMED.