

DEC 13 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VIOLETA CERVERA-LORNA,

Defendant - Appellant.

No. 09-50569

D.C. No. 3:09-cr-01605-LAB

MEMORANDUM*

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

Submitted December 6, 2010**

Before: GOODWIN, RYMER, and GRABER, Circuit Judges.

Violeta Cervera-Lorna appeals from the 78-month sentence imposed following her 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).

Cervera-Lorna contends that the district court erred by denying her request for a two-level minor role adjustment pursuant to U.S.S.G. § 3B1.2. The district court did not clearly err by denying Cervera-Lorna's request for a downward adjustment. *See United States v. Cantrell*, 433 F.3d 1269, 1283-84 (9th Cir. 2006); *see also United States v. Hursh*, 217 F.3d 761, 770 (9th Cir. 2000) (the fact that a defendant acted as a courier does not mean his role was minor).

Cervera-Lorna also contends that the district court's denial of a minor role adjustment created a drastic sentencing disparity between her and similarly situated defendants. This argument is unpersuasive. In any event, the record reflects that the district court specifically granted a downward variance in order to avoid sentencing disparities with similarly situated defendants, in accordance with 18 U.S.C. § 3553(a)(6).

The government's request to strike opposing counsel's declaration is denied as moot.

AFFIRMED.