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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>ROBERTO GAMBOA,</p> <p>Defendant - Appellant.</p> |
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No. 10-50298

D.C. No. 3:10-cr-00197-JLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submitted January 10, 2011**

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

Roberto Gamboa appeals from the 21-month sentence imposed following his guilty-plea conviction for transportation of illegal aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(ii). 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).

Gamboa contends that the district court committed error by failing to evaluate the complete factual basis of his request for a minor role adjustment. This contention is belied by the record.

Gamboa also contends that the district court erred by failing to grant a minor-role adjustment. The district court did not err by denying the adjustment because Gamboa did not meet his burden of demonstrating by a preponderance of the evidence that he was substantially less culpable than his co-participants. *See United States v. Cantrell*, 433 F.3d 1269, 1282-83 (9th Cir. 2006).

AFFIRMED.