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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>ERICK AGUILAR-ESPINOZA,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 11-50282

D.C. No. 3:11-cr-00141-LAB

MEMORANDUM*

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

Submitted February 21, 2012**

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Erick Aguilar-Espinoza appeals from the 24-month sentence imposed following his jury-trial conviction for importation of marijuana, in violation of 21 U.S.C. §§ 952, 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).

Aguilar-Espinoza contends that the district court erred in denying him a minor role adjustment under U.S.S.G. § 3B1.2(b). The district court did not clearly err in determining that Aguilar-Espinoza failed to carry his burden of establishing that he was “substantially less culpable” than his uncharged co-conspirator. *See* U.S.S.G. § 3B1.2, cmt. n. 3(A); *United States v. Awad*, 371 F.3d 583, 591 (9th Cir. 2004) (defendant bears the burden on entitlement to adjustment); *United States v. Hursh*, 217 F.3d 761, 770 (9th Cir. 2000) (denial of a minor role adjustment not clear error where the defendant was the sole driver and occupant of a car in which a substantial amount of drugs were hidden).

AFFIRMED.