

MAR 20 2012

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NOT FOR PUBLICATION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.

JOSE MANUEL OSUA-MADRICALES,

Defendant - Appellant.

No. 10-10418

D.C. No. 2:10-cr-00437-JAT

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James A. Teilborg, District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

Jose Manuel Osua-Madricales appeals from the 45-month sentence imposed following his guilty-plea conviction for reentry of a removed alien, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Osua-Madricales' counsel has filed a brief stating that there are no grounds for relief,

* 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).

along with a motion to withdraw as counsel of record. We provided the appellant with the opportunity to file a pro se supplemental brief. No pro se supplemental brief has been filed. We ordered counsel for both parties to submit supplemental letter briefs to the court addressing whether, in light of this court's recent decision in *Reina-Rodriguez v. United States*, 655 F.3d 1182 (9th Cir. 2011), the district court properly applied a 16-level sentencing enhancement based on defendant's 2003 conviction under Arizona Revised Statute § 13-3407.

We decline the government's request to take judicial notice of documents that are not part of the district court record. *See id.* at 1193. We remand to the district court so that the district court can apply a modified categorical approach in determining whether Osua-Madricales was necessarily convicted of a drug trafficking offense with respect to his conviction under Arizona Revised Statute § 13-3407. *See Shepard v. United States*, 544 U.S. 13, 16 (2005); *Taylor v. United States*, 495 U.S. 575, 602 (1990).

The motion of Alex D. Gonzalez, 2340 W. Ray Road, Suite 1, Chandler, AZ 85224, to withdraw as counsel is **GRANTED**. The district court is instructed to appoint new counsel.

VACATED and REMANDED.