

MAY 20 2013

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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NOT FOR PUBLICATION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>Plaintiff - Appellee,</p> <p>v.</p> <p>LEONARDO NICOLAS-BLAS,</p> <p>Defendant - Appellant.</p>

No. 11-50412

D.C. No. 2:11-cr-00136-ODW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Otis D. Wright, II, District Judge, Presiding

Submitted May 14, 2013**

Before: LEAVY, THOMAS, and MURGUIA, Circuit Judges.

Leonardo Nicolas-Blas appeals from the district court’s judgment and challenges the 46-month sentence imposed following his guilty-plea conviction for conspiracy to harbor and conceal illegal aliens, in violation of 8 U.S.C.

§ 1324(a)(1)(A)(v)(I). We have jurisdiction under 28 U.S.C. § 1291, and we

* 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).

affirm.

Nicolas-Blas contends that the district court erred by denying his request for a role adjustment pursuant to U.S.S.G. § 3B1.2. The record reflects that the court properly considered Nicolas-Blas's conduct as compared to the other participants in the conspiracy in assessing whether to grant the adjustment. Because Nicolas-Blas failed to prove that he was substantially less culpable than the average participant, the district court did not clearly err by denying the adjustment. *See* U.S.S.G. § 3B1.2 cmt. n.3(A); *United States v. Cantrell*, 433 F.3d 1269, 1282-83 (9th Cir. 2006).

Nicolas-Blas next contends that the district court violated Federal Rule of Criminal Procedure 32(i)(3)(B) by failing to address his argument that his criminal history category was overstated. Nicolas-Blas's contention is without merit because his legal challenge did not trigger the district court's obligations under Rule 32, which only applies to factual challenges to the presentence report. *See United States v. Petri*, No. 11-30337, 2013 WL 1490604, at *7 (9th Cir. Apr. 12, 2013).

AFFIRMED.