

DEC 06 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NOT FOR PUBLICATION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>RAFAEL ESQUIVEL-CASTANEDA,</p> <p>Defendant - Appellant.</p>

No. 13-50246

D.C. No. 3:12-cr-05197-LAB

MEMORANDUM*

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

Submitted November 19, 2013**

Before: CANBY, TROTT, and THOMAS, Circuit Judges.

Rafael Esquivel-Castaneda appeals from the district court’s judgment and challenges the 12-month sentence imposed following his guilty-plea conviction for bringing in illegal aliens without presentation and aiding and abetting, in violation

* 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).

of 8 U.S.C. § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Esquivel-Castaneda contends that the district court erred by imposing a two-level increase for using a minor to commit the crime under U.S.S.G. § 3B1.4. We review for clear error. *See United States v. Preciado*, 506 F.3d 808, 810 (9th Cir. 2007) (per curiam). The district court did not clearly err in finding that Esquivel-Castaneda affirmatively used his children in his crime. *See id.* (evidence that defendant “brought children along to a previously planned crime supports a finding that the minors were used to avoid detection”).

AFFIRMED.