

MAR 13 2014

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NOT FOR PUBLICATION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.

OSCAR ALONSO ROBLES-SALINAS,

Defendant - Appellant.

No. 13-50067

D.C. No. 3:12-cr-03464-LAB

MEMORANDUM*

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

Submitted March 10, 2014**

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

Oscar Alonso Robles-Salinas appeals from the district court's judgment and challenges the 60-month sentence imposed following his guilty-plea conviction for importation of heroin, in violation of 21 U.S.C. §§ 952 and 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).

Robles-Salinas contends that the district court erred by denying his request for a minor role adjustment under U.S.S.G. § 3B1.2(b). He argues that the court erred by (i) improperly considering his lack of candor with the probation officer, (ii) engaging in speculation about the type and amount of drugs involved in a prior smuggling venture, and (iii) giving undue consideration to the amount of drugs involved in the instant offense. Contrary to Robles-Salinas's contention, the court properly considered the totality of the circumstances in making its minor role determination. *See* U.S.S.G. § 3B1.2 cmt. n.3(C). Moreover, because Robles-Salinas failed to prove that he was substantially less culpable than the average participant in the offense, 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. Rodriguez-Castro*, 641 F.3d 1189, 1192-93 (9th Cir. 2011).

AFFIRMED.