NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 28 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. FORTINO ELENES, Jr., Defendant - Appellant.	No. 14-50156 D.C. No. 3:13-cr-03962-LAB MEMORANDUM*

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

Submitted January 21, 2015**

Before: CANBY, GOULD, and N.R. SMITH, Circuit Judges.

Fortino Elenes, Jr., appeals from the district court's judgment and challenges the 70-month sentence imposed following his guilty-plea conviction for importation of methamphetamine, in violation of 21 U.S.C. §§ 952 and 960. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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* 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).

Elenes contends that the district court applied an incorrect legal standard in denying his request for a minor-role adjustment under U.S.S.G. § 3B1.2 and improperly concluded that he was not entitled to the adjustment. We review de novo the district court's interpretation of the guidelines and for clear error the district court's factual determination that a defendant is not a minor participant. *See United States v. Hurtado*, 760 F.3d 1065, 1068 (9th Cir. 2014). Contrary to Elenes's contention, the record reflects that the court properly considered his culpability relative to that of the average participant. *See* U.S.S.G. § 3B1.2 cmt. n.3(A). Further, in light of the totality of the circumstances, the district court did not clearly err in determining that Elenes failed to prove that he was entitled to the adjustment. *See id*. § 3B1.2 cmt. n.3(C); *Hurtado*, 760 F.3d at 1069.

AFFIRMED.