

APR 10 2015

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NOT FOR PUBLICATION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.

BRAULIO GONZALEZ-TEJEDA,

Defendant - Appellant.

No. 13-50435

D.C. No. 3:12-cr-02967-WQH-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted April 8, 2015**
Pasadena California

Before: SILVERMAN and BEA, Circuit Judges and DONATO,*** District Judge.

* 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).

*** The Honorable James Donato, District Judge for the U.S. District Court for the Northern District of California, sitting by designation.

Defendant Braulio Gonzalez-Tejeda appeals the district court's denial of his 8 U.S.C. § 1326(d) motion to dismiss the indictment. We have jurisdiction pursuant to 28 U.S.C. § 1291 and affirm the conviction.

The district court did not err when it considered judicially noticeable conviction documents not admitted at the removal hearing to decide whether the defendant had a plausible claim for relief from removal, *i.e.*, whether the defendant was removable as charged for having committed a drug trafficking aggravated felony. *United States v. Bustos-Ochoa*, 704 F.3d 1053, 1056-57 (9th Cir. 2012) (per curiam), *amended*, 714 F.3d 1133 (9th Cir. 2013). The defendant cannot prove prejudice because the conviction documents confirm the defendant's admission to the immigration judge that the conviction was a drug trafficking aggravated felony. *Id.*

Because the defendant cannot prove prejudice, in any event, we do not reach his argument that his administrative appeal waiver was not considered and intelligent.

AFFIRMED.