

APR 10 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ADRIAN TOLEDO-MARTINEZ,

Defendant - Appellant.

No. 14-50230

D.C. No. 3:13-cr-02616-BEN-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Roger T. Benitez, District Judge, Presiding

Submitted April 8, 2015\*\*  
Pasadena California

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

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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).

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

Defendant Adrian Toledo-Martinez appeals his conviction and sentence for being found in the United States after removal in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742 and affirm.

The defendant argues that his Washington Revised Code § 69.50.401 convictions for delivery of cocaine and heroin are not categorical drug trafficking offenses. However, we recently rejected the same argument advanced by the defendant, that § 69.50.401(a) is categorically overbroad because it fails to exempt acts of “administering” drugs. *See United States v. Burgos-Ortega*, 777 F.3d 1047, 1052-55 (9th Cir. 2015). The district court did not err when it denied the motion to dismiss the indictment and applied a 12-level increase to the base offense level pursuant to United States Sentencing Guideline § 2L1.2(b)(1)(A).<sup>1</sup>

**AFFIRMED.**

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<sup>1</sup>United States Sentencing Commission, *Guidelines Manual*, § 2L1.2(b)(1)(A) (Nov. 2013).