

DEC 06 2013

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NOT FOR PUBLICATION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.

JUAN MORALES MORAN,

Defendant - Appellant.

No. 13-50142

D.C. No. 3:12-cr-04444-GT

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Gordon Thompson, Jr., District Judge, Presiding

Submitted November 19, 2013**

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

Juan Morales Moran appeals from the district court's judgment and challenges the nine-month custodial sentence and three-year term of supervised release imposed following his guilty-plea conviction for fraud and misuse of visas,

* 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).

permits and other entry documents, in violation of 18 U.S.C. § 1546. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand.

Morales Moran contends, and the government concedes, that the district court erred when it imposed a two-level increase under U.S.S.G. § 2L2.2(b)(1) for having a prior deportation. We agree that the district court erred when it imposed the enhancement in this case. Accordingly, Morales Moran is entitled to resentencing without the two-level enhancement.

In light of our decision, we do not reach Morales Moran's remaining challenges to his sentence.

The government represents that Morales Moran has been deported. We remand to the district court for proceedings consistent with this disposition and a determination whether Morales Moran is available for resentencing or would waive his right to be present for resentencing. *See United States v. Aguilar-Reyes*, 723 F.3d 1014, 1018 (9th Cir. 2013).

VACATED and REMANDED.