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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NOT FOR PUBLICATION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.

FEDERICO LOPEZ-TORRES,

Defendant - Appellant.

No. 11-10676

D.C. No. 4:11-cr-01330-JGZ-
BPV-1

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FEDERICO LOPEZ-TORRES,

Defendant - Appellant.

No. 12-10006

D.C. No. 4:08-cr-01454-JGZ-
BPV-1

Appeal from the United States District Court
for the District of Arizona
Jennifer G. Zipps, District Judge, Presiding

Argued and Submitted August 16, 2013
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: REINHARDT, NOONAN, and HURWITZ, Circuit Judges.

Federico Lopez-Torres pleaded guilty to illegal re-entry in violation of 8 U.S.C. § 1326 and admitted violating terms of his supervised release. At sentencing, the government declined to move for a third-level reduction for acceptance of responsibility because Lopez-Torres did not waive his right to appeal. The district court concluded that it could not grant the third-level reduction absent a government motion.

Effective November 1, 2013, section 3E1.1 of the Sentencing Guidelines was amended to clarify that “the government should not withhold [a motion for reduction for acceptance of responsibility] based on interests not identified in § 3E1.1, such as whether the defendant agrees to waive his or her right to appeal.” U.S.S.G. § 3E1.1, comment. (n.6). The amended Guidelines apply to this case. *See United States v. Catalan*, 701 F.3d 331, 333 (9th Cir. 2012) (“When an amendment to the Guidelines clarifies, rather than alters, existing law, we use the amendment to interpret the Guidelines provision retroactively.”).

At oral argument, the government commendably conceded that if this amendment to the Guidelines became effective, a remand to the district court for resentencing was required. We therefore **VACATE** the sentence imposed by the district court and **REMAND** for resentencing.

Each party shall bear its own costs on appeal.