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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JAVIER MORALES-GALVEZ,</p> <p>Defendant - Appellant.</p>

No. 11-50339

D.C. No. 3:11-cr-01753-LAB

MEMORANDUM*

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

Submitted June 26, 2012**

Before: SCHROEDER, HAWKINS, and GOULD, Circuit Judges.

Javier Morales-Galvez appeals from the 84-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C.

* 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).

§ 1291, and we affirm.

Morales-Galvez contends that the district court erred because it did not rule on the sufficiency of the government’s rationale for refusing to make a motion for a third point for acceptance of responsibility under U.S.S.G. § 3E1.1(b). The district court did not err because the record reflects that the government’s reason was not improper. *See United States v. Johnson*, 581 F.3d 994, 1002 (9th Cir. 2009) (“[T]he allocation and expenditure of prosecutorial resources for the purposes of defending an appeal is a rational basis for declining to move for the third reduction point.”).

We decline Morales-Galvez’s request that we call for en banc review to reconsider *Johnson*.

AFFIRMED.