

SEP 14 2012

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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NOT FOR PUBLICATION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.

ERWIN ALVARADO,

Defendant - Appellant.

No. 11-10622

D.C. No. 4:11-cr-02002-JGZ-  
BPV-1

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Cindy K. Jorgenson, District Judge, Presiding

Submitted September 10, 2012\*\*

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Erwin Alvarado appeals from the 24-month sentence imposed following his guilty-plea conviction for illegal re-entry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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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).

Alvarado contends that the district court erred by not sua sponte granting him a third-level reduction for acceptance of responsibility. He argues that the reason cited by the government for refusing to make the motion for the reduction, that he reserved his right to appeal, is an impermissible reason under U.S.S.G. § 3E1.1(b). As Alvarado concedes, this argument is foreclosed by *United States v. Johnson*, 581 F.3d 994, 1002 (9th Cir. 2009), where we held that the expenditure of resources in anticipating and preparing for an appeal is an appropriate consideration under U.S.S.G. § 3E1.1(b).

**AFFIRMED.**