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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NOT FOR PUBLICATION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 style="text-align: center;">Plaintiff - Appellee,</p> <p>v.</p> <p>ROBERTO SOLIS-CABRALLES, a.k.a. David Contreras, a.k.a. Javier Zasueta,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 12-10316

D.C. No. 2:11-cr-00265-KJM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

Submitted June 18, 2013**

Before: TALLMAN, M. SMITH, and HURWITZ, Circuit Judges.

Roberto Solis-Cabralles appeals from the district court’s judgment and challenges the 77-month sentence imposed following his jury-trial conviction for two counts of being a deported alien found in the United States, in violation of 8

* 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).

U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Solis-Cabralles contends that the district court erred by denying him a two-level downward adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1(a), because his pre-trial statements demonstrated his acceptance of responsibility. The parties dispute the standard of review that applies to this claim. Contrary to Solis-Cabralles's argument, the district court did not misapprehend the law with respect to the adjustment for acceptance of responsibility. We therefore review the district court's finding that Solis-Cabralles did not accept responsibility for his offense for clear error. *See United States v. Garrido*, 596 F.3d 613, 617 (9th Cir. 2010).

The district court considered Solis-Cabralles's pre-trial statements but denied the adjustment based on the record as a whole, including Solis-Cabralles's conflicting statements to immigration authorities and his suggestion that his presence in the United States was involuntary. The district court did not clearly err in denying the adjustment. *See United States v. Molina*, 596 F.3d 1166, 1169-70 (9th Cir. 2013).

AFFIRMED.