

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

DEC 23 2013

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SAUL RIVAS-MENESES,

Defendant - Appellant.

No. 11-50469

D.C. No. 3:11-cr-01757-JAH  
Southern District of California,  
San Diego

ORDER

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

The parties' joint motion to remand for resentencing is granted. The memorandum disposition filed on June 29, 2012, is withdrawn. A replacement memorandum disposition is filed concurrently with this order.

The petition for rehearing en banc is denied as moot.

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MEMORANDUM\*

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

Submitted June 26, 2012\*\*

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

Saul Rivas-Meneses appeals from the 40-month sentence imposed following his guilty-plea conviction for attempted entry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand for resentencing.

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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).

Rivas-Meneses contends that the district court erred by failing to grant his request for a third-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(b) because his refusal to waive his right to appeal was an improper basis for the government to refuse to move for the reduction. The parties have filed a joint motion requesting that this court vacate Rivas-Meneses's sentence and remand for resentencing.

Effective November 1, 2013, U.S.S.G § 3E1.1 was amended to clarify that “[t]he government should not withhold [a motion for a third-level 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 cmt. n.6. We agree that resentencing is warranted in this case to allow the district court to determine whether Rivas-Meneses should receive a third point for acceptance of responsibility.

**VACATED and REMANDED for resentencing.**