NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	No. 13-10203
Plaintiff - Appellee,	D.C. No. 2:12-cr-00297-GMN
v.	MEMORANDUM[*]
JORGE MONTES-LOYA,	
Defendant - Appellant.	

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, District Judge, Presiding

Submitted February 18, 2014[**]

Before: ALARCÓN, O'SCANNLAIN, and FERNANDEZ, Circuit Judges.

Jorge Montes-Loya appeals from the district court's judgment and

challenges the 51-month sentence imposed following his guilty-plea conviction for

being a deported alien found unlawfully in the United States, in violation of 8

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

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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).

remand for resentencing.

Montes-Loya contends that the district court erred by failing to appreciate and explain why it declined to exercise its discretion to vary downward from the Guidelines range to account for the government's failure to move for a third point for acceptance of responsibility under U.S.S.G. § 3E1.1(b). Effective November 1, 2013, section 3E.1 was amended to clarify that "[t]he 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 cmt. n.6. The government concedes, and we agree, that Montes-Loya is entitled to a new sentencing hearing at which the government will move for the third point. Accordingly, we vacate and remand for resentencing.

In light of this disposition, we decline to reach Montes-Loya's claim that his sentence is substantively unreasonable.

VACATED and REMANDED for resentencing.