

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 13-40705
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 9, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FERNANDO ALFREDO MORA, also known as Fernando Alfredo Mora
Robledo,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:13-CR-17-1

Before STEWART, Chief Judge, and PRADO and HAYNES, Circuit Judges.

PER CURIAM:*

Fernando Alfredo Mora appeals from the sentence imposed following his guilty plea conviction for illegal reentry. The district court imposed the lowest within-guidelines sentence, 33 months of imprisonment and three years of supervised release.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 13-40705

Mora argues that the district court reversibly erred by failing to award him an additional one-level reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(b). As we held recently in *United States v. Villegas Palacios*, __ F.3d __, No. 13-40153, 2014 WL 2119096, at *1 (5th Cir. May 21, 2014), the amended version of § 3E1.1 is applicable in a case such as this one, where the amendment was proposed at the time of sentencing and went into effect while the appeal was pending. Pursuant to the amended § 3E1.1, the Government may not withhold a § 3E1.1(b) motion because the defendant refuses to waive his right to appeal, as it did in this case. The Government has not shown that this error was harmless. *See United States v. Delgado-Martinez*, 564 F.3d 750, 752-53 (5th Cir. 2009).

Accordingly, Mora's sentence is VACATED and the case is REMANDED to the district court for resentencing consistent with this opinion.