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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VINCENTE LUA-GUTIERREZ,

Defendant - Appellant.

No. 06-30308

D.C. No. CR-03-02150-FVS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Bruce M. Van Sickle, Senior District Judge, Presiding

Submitted November 13, 2007**

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

Vicente Lua-Gutierrez appeals from the district court's order reaffirming his sentence following limited remand under *United States v. Ameline*, 409 F.3d 1073,

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1084-85 (9th Cir. 2005) (en banc). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Lua-Gutierrez contends that because he preserved a challenge to sentencing under the mandatory Guidelines, his case should not have been remanded by this Court under the plain error analysis set forth in *Ameline*. We conclude that the district court was bound by this Court's mandate, *see United States v. Perez*, 475 F.3d 1110, 1114 (9th Cir. 2007), and therefore did not err in failing to conduct a new sentencing hearing following the determination that it would not have imposed a materially different sentence, *see Ameline*, 409 F.3d at 1084.

We decline to consider Lua-Gutierrez's contention, raised for the first time in his reply brief, that application of law-of-the case doctrine to this Court's prior order violates due process. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996).

AFFIRMED.