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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NOT FOR PUBLICATION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>Plaintiff - Appellee,</p> <p>v.</p> <p>MERCED HERMELINDA TAPIA,</p> <p>Defendant - Appellant.</p>
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No. 08-10071

D.C. No. CR-07-00317-JMR

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
John M. Roll, District Judge, Presiding

Submitted January 13, 2009\*\*

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Merced Hermelinda Tapia appeals from the 46-month sentence imposed following her guilty-plea conviction for illegal reentry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291,

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

and we affirm.

Tapia contends that the district court erred by failing to grant an additional one-level downward adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(b). The district court did not clearly err by declining to grant the reduction. *See United States v. Espinoza-Cano*, 456 F.3d 1126, 1138 (9th Cir. 2006).

Tapia also contends that the district court erred by foreclosing its consideration of downward departures based on the fact that she did not plead guilty pursuant to a plea agreement. We conclude that the district court did not procedurally err, and that the sentence is substantively reasonable. *See Gall v. United States*, 128 S. Ct. 586, 596-97 (2007); *cf. United States v. Reina-Rodriguez*, 486 F.3d 1147, 1158-59 (9th Cir. 2006), overruled on other grounds by *United States v. Grisel*, 488 F.3d 844, 851 n.5 (9th Cir. 2007) (holding that the district court's consideration of whether the defendant pled guilty pursuant to a plea agreement did not render the sentence unreasonable).

**AFFIRMED.**