

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

United States Court of Appeals  
Fifth Circuit

**FILED**

March 16, 2011

Lyle W. Cayce  
Clerk

---

No. 10-40840  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EMILIO BORJA-ESTRADA,

Defendant-Appellant

---

Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:10-CR-277-1

---

Before WIENER, PRADO and OWEN, Circuit Judges.

PER CURIAM:\*

Emilio Borja-Estrada appeals the sentence of 80 months of imprisonment imposed following his guilty plea conviction for illegal reentry after deportation. Borja-Estrada argues that the use of a prior alien smuggling conviction to both enhance his offense level and to calculate his criminal history score constitutes impermissible double counting. As Borja-Estrada concedes, his argument is foreclosed by precedent. *See United States v. Kings*, 981 F.2d 790, 796 (5th Cir. 1993). Accordingly, the Government's motion for summary affirmance is

---

\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 10-40840

GRANTED, its alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.