

United States Court of Appeals for the Fifth Circuit

No. 25-40698
CONSOLIDATED WITH
No. 25-40704
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 25, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

OSCAR AMBROCIO HERNANDEZ,

Defendant—Appellant.

Appeals from the United States District Court
for the Southern District of Texas
USDC Nos. 7:25-CR-169-1,
7:25-CR-425-12

Before STEWART, RICHMAN, and HIGGINSON, *Circuit Judges*.

PER CURIAM:*

Oscar Ambrocio Hernandez appeals the sentence imposed following his conviction for illegal reentry and assaulting a corrections officer. He challenges the denial of a mitigating role adjustment.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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c/w No. 25-40704

The district court's finding that Hernandez was an average participant in the offense is plausible in light of the record as a whole. *See United States v. Torres-Hernandez*, 843 F.3d 203, 207 (5th Cir. 2016). The extent of his participation, pushing and attempting to tackle a correctional officer and holding an officer down by the neck, does not suggest that he was less culpable than the average participant. *See* U.S.S.G. § 3B1.2 (n.3(C)). Moreover, this conduct was not "peripheral to the advancement of the illicit activity." *United States v. Miranda*, 248 F.3d 434, 447 (5th Cir. 2001). Hernandez was not among the least culpable of the participants or less culpable than most other participants in the offense. *See* U.S.S.G. § 3B1.2 & comment. (nn.4-5).

The judgment of the district court is AFFIRMED.