

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 06 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARITZA OLMEDA DREWRY,

Defendant - Appellant.

No. 09-50198

D.C. No. 3:05-cr-01282-NAJ

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Napoleon A. Jones, District Judge, Presiding

Submitted September 14, 2009\*\*

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Maritza Olmeda Drewry appeals from the 51-month sentence imposed upon re-sentencing following her jury-trial conviction for crimes relating to smuggling

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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).

illegal aliens into the United States. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm but remand to correct the judgment.

Drewry contends that the district court erred by imposing a substantial risk of death or serious bodily harm enhancement, pursuant to U.S.S.G. §2L1.1(b)(5). The record reflects that the district court did not err in concluding that Dewry's offense conduct warranted an enhancement under § 2L1.1(b)(5). *See United States v. Hernandez-Guardado*, 228 F.3d 1017, 1027-28 (9th Cir. 2000).

Drewry also contends that the district court violated the Sixth Amendment by engaging in impermissible judicial fact-finding. There was no Sixth Amendment violation because Drewry was sentenced well below the statutory maximum. *See id.* at 1027.

Finally, we note that the judgment states that Drewry was convicted of two counts of bringing in illegal aliens for financial gain pursuant to 8 U.S.C § 1324(a)(2)(B)(ii). However, in *United States v. Hernandez-Orellana*, 539 F.3d 994, 1005-06 (9th Cir. 2008), this court vacated these two convictions. Accordingly, we remand to correct the judgment. *See Fed. R.Crim. Proc.* 36.

**AFFIRMED; REMANDED to correct the judgment.**