

## United States Court of Appeals

Fifth Circuit

FILED

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

July 13, 2006

Charles R. Fulbruge III  
ClerkNo. 05-11096  
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ELIO DE JESUS ANDINO-RODRIGUEZ, also known as  
Marcus Pedro Cabrera, also known as Miguel Saavedra,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 1:05-CR-9-ALL  
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Before DAVIS, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Elio De Jesus Andino-Rodriguez raises arguments that are foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which held that 8 U.S.C. § 1326(b)(2) is a penalty provision and not a separate criminal offense. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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