

September 8, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-50018  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALEJANDRO MARTINEZ-FLORES, also known as Raul  
Torres-Lopez, also known as Raul Cipriano Torres-Lopez,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:04-CR-317  
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Before KING, GARWOOD, and JOLLY, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Alejandro  
Martinez-Flores 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that this opinion should not be published and is not precedent  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.