

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 12, 2007

No. 06-50900
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

PROCOPIO RAMIREZ-GOMEZ

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:05-CR-1129-ALL

Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Procopio Ramirez-Gomez (Ramirez) raises arguments that he concedes 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. See *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202). Ramirez has served his term of incarceration and has been removed from the United States. Ramirez also raises arguments that he concedes are foreclosed by *United States v. Rosenbaum-*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Alanis, 483 F.3d 381, 383 (5th Cir.), petition for cert. filed, (June 25, 2007) (No. 06-12082), which held that an appeal of a sentence is moot when the appellant has been removed and is barred from entering the United States. The Government's motion for summary affirmance is DENIED. The appeal is DISMISSED.