

April 4, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-51360
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MAGDELENO REYMUNDO RIVAS-HERNANDEZ, also known as Reynaldo
Garcia, also known as Magdaleno Rivas,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:06-CR-685-ALL

Before JONES, Chief Judge, and HIGGINBOTHAM and CLEMENT, Circuit
Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Magdeleno
Reymundo Rivas-Hernandez 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.

* 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this opinion should not be published and is not precedent except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.