

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

January 30, 2008

Charles R. Fulbruge III
Clerk

No. 07-50795
Conference Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JAVIER RODRIGUEZ-DURAN

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:06-CR-1022-ALL

Before REAVLEY, BENAVIDES, and ELROD, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Javier Rodriguez-Duran 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. *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), cert. denied, 2008 WL 59441 (Jan.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

7, 2008) (No. 07-6202). The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.