

March 7, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-41201
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE GUADALUPE PERALES-GONZALEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:06-CR-243-ALL

Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Jose Guadalupe Perales-Gonzalez 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. As the Government notes, Perales-Gonzalez's request to remand the case for the district court to correct the judgment is moot. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court, as amended, 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.