

October 5, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-40379  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARCO ANTONIO OVALLE-CASTILLO, also known  
as Francisco Javier Avilla-Valencia,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:05-CR-845-ALL  
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Before JONES, Chief Judge, and SMITH and STEWART, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Marco Antonio Ovalle-Castillo 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, and by United States v. Garcia-Mendez, 420 F.3d 454 (5th Cir. 2005), cert. denied, 126 S. Ct. 1398 (2006), which held that a Texas conviction for burglary of a habitation was equivalent to burglary of a dwelling. The

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.