

October 5, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20916
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CELEDINO GARZA-REYNA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:05-CR-165-ALL

Before JONES, Chief Judge, and SMITH and STEWART, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Celedino Garza-Reyna 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. Lopez-Ortiz, 313 F.3d 225, 229-31 (5th Cir. 2002), which held that an immigration judge's failure to inform an alien of his eligibility for discretionary waiver of removal at his removal proceeding did not render the proceeding fundamentally unfair. The Government's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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