

**F I L E D**

September 20, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-51531  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE HUMBERTO CAMPA-FAVELA, also known as  
Carlos Fabela-DeLeon,

Defendant-Appellant.

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Appeal from the United States District Court for  
the Western District of Texas  
(USDC No. 3:04-CR-1902-FM)

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Before REAVLEY, STEWART, and OWEN, Circuit Judges.

PER CURIAM:\*

Jose Humberto Campa-Favela appeals his sentence for illegally re-entering the United States. We affirm his sentence for the following reasons:

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

1. Campa-Favela did not object to the sufficiency of the evidence identifying him as the person convicted in the Iowa state case at the first sentencing hearing and therefore would have failed in his first appeal when he raised the issue in his brief. *United States v. Fields*, 923 F.2d 358, 360-61 (5th Cir. 1991) (holding that failure to object to pre-sentence report waives argument regarding sufficiency of evidence of identity), *overruled on other grounds by United States v. Lambert*, 984 F.2d 658, 662 & n.10 (5th Cir. 1993) (en banc). When he did present his challenge to the sufficiency of the evidence at the re-sentencing hearing, the United States produced sufficient evidence to identify Campa-Favela.

2. As Campa-Favela recognizes, his Fifth Amendment argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1988).

AFFIRMED.