

February 6, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-50255  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS MENDEZ-AVELAR, also known as Noe Ayala Mendez,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:05-CR-182  
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Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:\*

Jesus Mendez-Avelar (Mendez) appeals his jury conviction of being found unlawfully in the United States following removal. Mendez contends that the Government failed to prove that he was physically removed from the country prior to being found unlawfully in the United States, an element of the offense. See 8 U.S.C. § 1326(a). We hold that a reasonable juror could have found that the evidence showed beyond a reasonable doubt that Mendez was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

deported to El Salvador on December 22, 2004. See Jackson v. Virginia, 443 U.S. 307, 319 (1979).

Mendez contends also that the district court's admission into evidence of a certificate of nonexistence of record as proof of his failure to apply to the Attorney General for readmission violated his rights under the Confrontation Clause. Mendez properly concedes that this issue is foreclosed by this court's decision in United States v. Rueda-Rivera, 396 F.3d 678, 680 (5th Cir. 2005). He has raised the issue to preserve it for possible Supreme Court review. The judgment is

AFFIRMED.