

April 4, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-11179  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID EFRAIN PALACIOS-YANES, also known as David Fran Yanez,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:06-CR-89-ALL  
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Before JONES, Chief Judge, and HIGGINBOTHAM and CLEMENT, Circuit  
Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, David Efrain  
Palacios-Yanes 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. The Government's motion for  
summary affirmance is GRANTED, and the judgment of the district  
court is AFFIRMED.

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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this opinion should not be published and is not precedent except  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.