

April 4, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-50670  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OSCAR LOMELI,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:05-CR-573  
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Before JONES, Chief Judge, and HIGGINBOTHAM and CLEMENT, Circuit  
Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Oscar Lomeli  
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this opinion should not be published and is not precedent except  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.