

February 7, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-20594  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN LUIS SALDANA-GUERRERO, also known as Juan Luis Saldana, Jr.,  
also known as Juan Luis Saldana Guerrero, also known as Juan  
Saldana Guerrero,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:06-CR-18  
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Before REAVLEY, JOLLY, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Juan Luis Saldana-Guerrero raises arguments that are foreclosed by United States v. Garcia-Mendez, 420 F.3d 454, 457 (5th Cir. 2005), cert. denied, 126 S. Ct. 1398 (2006), which held that a Texas conviction for burglary of a habitation was equivalent to burglary of a dwelling and therefore was a crime of violence under U.S.S.G. § 2L1.2, and by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which held that 8 U.S.C.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 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.