IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT United States Court of Appeals Fifth Circuit

FILED July 9, 2008

No. 07-51502 Conference Calendar

Charles R. Fulbruge III Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

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LORENZO FRANCISCO RAMIREZ-MENDEZ

Defendant-Appellant

Appeal from the United States District Court for the Western District of Texas USDC No. 3:07-CR-1344-ALL

Before JOLLY, CLEMENT, and OWEN, Circuit Judges. PER CURIAM:^{*}

Appealing the Judgment in a Criminal Case, Lorenzo Francisco Ramirez-Mendez 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. United States v. Pineda-Arrellano, 492 F.3d 624, 625 (5th Cir. 2007), cert. denied, 128 S. Ct. 872 (2008).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.