United States Court of Appeals Fifth Circuit

FILED

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

November 9, 2006

Charles R. Fulbruge III Clerk

No. 06-50502 Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS HERNANDEZ-RODRIGUEZ,

Defendant-Appellant.

Appeal from the United States District Court for the Western District of Texas USDC No. 2:05-CR-285-ALL

Before BARKSDALE, DeMOSS, and PRADO, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Luis Hernandez-Rodriguez raises arguments that are foreclosed by <u>Almendarez-</u> <u>Torres v. United States</u>, 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.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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