

October 5, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-50284  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HERMINIO OCHOA-TRAIN, also known as Hermino Ochoa-Train,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:05-CR-115  
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Before JONES, Chief Judge, and SMITH and STEWART, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Herminio Ochoa-Train 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.