

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 3, 2007

No. 07-40314
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JOSE MARTIN GUTIERREZ-FUENTES

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:06-CR-1591

Before JOLLY, DAVIS, and WIENER, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Jose Martin Gutierrez-Fuentes 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), petition for cert. filed (Aug.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

28, 2007) (No. 07-6202). The appellant's motion for summary disposition is GRANTED, and the judgment of the district court is AFFIRMED.