

September 8, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-50405
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARIO ALBERTO BETANCES-OCHOA, also known as Mario Jorge
Leyva-Rodriguez, also known as Mario A. Portillo, also known
as Mario Alberto Betancias-Ochoa, also known as Mario Ochoa,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:05-CR-2353

Before KING, GARWOOD, and JOLLY, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Mario Alberto
Betances-Ochoa 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.

* 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that this opinion should not be published and is not precedent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.