

**FILED**

September 6, 2007

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III  
Clerk

---

No. 07-40038  
Conference Calendar

---

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

FULGENCIO CORTEZ-ESCOBAR

Defendant-Appellant

---

Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:06-CR-1104-1

---

Before DeMOSS, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Fulgencio Cortez-Escobar 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. See *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007). The appellant's motion for summary disposition 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.