

October 5, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50908
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROMEO CRUZ-ARGUELLO,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:04-CR-1013-ALL

Before JONES, Chief Judge, and SMITH and STEWART, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Romeo Cruz-Arguello raises arguments that are foreclosed by United States v. Murillo-Lopez, 444 F.3d 337, 344-45 (5th Cir. 2006), which held that a California conviction for burglary of an inhabited dwelling house was equivalent to burglary of a dwelling and therefore was a crime of violence under U.S.S.G. § 2L1.2, and 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.