

June 6, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-11217
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARMANDO LOPEZ-MATA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 6:06-CR-19-ALL

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Armando Lopez-Mata (Lopez) 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. Lopez also raises arguments that are foreclosed by United States v. Mejia-Huerta, 480 F.3d 713, 723 (5th Cir. 2007), petition for cert. filed, 75 U.S.L.W. 3585 (U.S. Apr. 18, 2007) (No. 06-1381), which held that the district court is not required to provide notice prior to sentencing of its *sua*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sponte intention to impose a non-Guidelines sentence. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.