

June 6, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-11328  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE NAVARRETE-FIERRO, also known as Jose Luis Fierro, also  
known as Ricardo Navarro, also known as Jose Luis Navarrete,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 1:06-CR-23-1  
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Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Jose Navarrete-Fierro (Navarrete) 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. Navarrete 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

district court is not required to provide notice prior to sentencing of its *sua 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.