

October 5, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40410
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LIBORIO MARTINEZ-MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:05-CR-832-ALL

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

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Liborio Martinez-
Martinez 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this opinion should not be published and is not precedent except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.