

April 4, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-41100  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAMON ELIZONDO-GUTIERREZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:04-CR-949-ALL  
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Before JONES, Chief Judge, and HIGGINBOTHAM and CLEMENT, Circuit  
Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Ramon Elizondo-  
Gutierrez 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.

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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this opinion should not be published and is not precedent except  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.