

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals

Fifth Circuit

**FILED**

**August 8, 2007**

\_\_\_\_\_  
No. 06-41349  
Conference Calendar  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JESUS FRANCISCO MORALES-AGUSTINE

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:04-CR-921  
\_\_\_\_\_

Before DENNIS, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Jesus Francisco Morales-Agustine (Morales) argues that the enhancement provisions of 8 U.S.C. § 1326(b) are unconstitutional. To the extent his arguments may be raised in this appeal following remand, *United States v. Matthews*, 312 F.3d 652, 657 (5th Cir. 2002), Morales's arguments 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 appellant's motion for summary

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 06-41349

disposition is GRANTED, and the judgment of the district court is AFFIRMED.