

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

November 8, 2007

Charles R. Fulbruge III  
Clerk

---

No. 07-40586  
Conference Calendar

---

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

GERARDO CONTRERAS-MONTOYA

Defendant-Appellant

---

Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:07-CR-137-1

---

Before KING, BARKSDALE, and DENNIS, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Gerarado Contreras-Montoya 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. See *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug.

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

28, 2007) (No. 07-6202). The appellant's motion for summary disposition is GRANTED, and the judgment of the district court is AFFIRMED.