

FILED

August 8, 2007

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 07-50090
Conference Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ELEUTERIO PEREZ-RAYOS

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:06-CR-1176

Before DENNIS, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Eleuterio Perez-Rayos raises arguments challenging the constitutionality of 8 U.S.C. § 1326(b) and 21 U.S.C. § 851 that he concedes 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.