

**FILED**

September 6, 2007

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III  
Clerk

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No. 07-50237  
Conference Calendar

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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ROBERTO PENA-ROJAS, also known as Benjamin Arias-Gutierrez

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:06-CR-1918-1

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Before DeMOSS, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Roberto Pena-Rojas 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). 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.