

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

January 30, 2008

Charles R. Fulbruge III  
Clerk

\_\_\_\_\_  
No. 07-51197

Conference Calendar  
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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

AGUSTIN GARCIA-CRUZ

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:07-CR-161-ALL  
\_\_\_\_\_

Before REAVLEY, BENAVIDES, and ELROD, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Agustin Garcia-Cruz 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. *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), cert. denied, 2008 WL 59441 (Jan.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

7, 2008) (No. 07-6202). The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.