

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

February 18, 2009

Charles R. Fulbruge III  
Clerk

\_\_\_\_\_  
No. 08-50880

Conference Calendar  
\_\_\_\_\_

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

EMANUEL DE JESUS GUERRA-FLORES

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:07-CR-915-ALL  
\_\_\_\_\_

Before HIGGINBOTHAM, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Emanuel De Jesus Guerra-Flores 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*, 128 S. Ct. 872 (2008). 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.