

September 8, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-20154  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MANUEL NAJERA-MARTINEZ, also known as Manuel  
Najera Martinez, Jr., also known as Manuel  
Martinez Najera, Jr., also known as Manuel Najera,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:05-CR-137-ALL  
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Before KING, GARWOOD, and JOLLY, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Manuel Najera-  
Martinez 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. 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that this opinion should not be published and is not precedent  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.