

February 7, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40855
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ESTHELA AGUILAR-LARA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:05-CR-989

Before REAVLEY, JOLLY, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Esthela Aguilar-Lara 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; and by United States v. Carmichael, 343 F.3d 756, 761-62 (5th Cir. 2003), which held that a challenge to the district court's order requiring the defendant to cooperate in the collection of a DNA sample as a condition of supervised release

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

is not ripe for review on direct appeal. The Government's motion for summary affirmance is GRANTED.

JUDGMENT AFFIRMED; APPEAL DISMISSED IN PART.