

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50624
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS ORTIZ-HERNANDEZ, also known as Carlos
Ortiz-Vaca, also known as Junior Rudolfo Colunga,
also known as Hipolito Carreon Ortiz,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:04-CR-212-ALL-DB

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Carlos Ortiz-
Hernandez raises arguments that are foreclosed by Almendarez-
Torres v. United States, 523 U.S. 224, 235 (1998), which held
that a prior conviction is a sentencing factor under 8 U.S.C.
§ 1326(b)(2) and not a separate criminal offense. The
Government's motion for summary affirmance is GRANTED, and the
judgment of the district court is AFFIRMED.

* 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this opinion should not be published and is not precedent except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.