

November 9, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 04-51217  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OCTAVIO ACOSTA-MARQUEZ, also known as Francisco  
Lopez-Martinez, also known as Octavio Marquez-Acosta,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:04-CR-981-ALL  
-----

Before REAVLEY, GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Octavio Acosta-  
Marquez 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that this opinion should not be published and is not precedent  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.