

October 5, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40558
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE ANGEL ESQUIVEL-CANTERA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:05-CR-1005-ALL

Before JONES, Chief Judge, and SMITH and STEWART, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Jose Angel Esquivel-Cantera raises arguments that are foreclosed by United States v. Valdez-Maltos, 443 F.3d 910, 911 (5th Cir.), cert. denied, 2006 U.S. LEXIS 6189 (U.S. Oct. 2, 2006)(No. 06-5473), and United States v. Garcia-Mendez, 420 F.3d 454 (5th Cir. 2005), cert. denied, 126 S. Ct. 1398 (2006), which held that a Texas conviction for burglary of a habitation was equivalent to burglary of a dwelling, and by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which held that 8 U.S.C.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 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.