

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 06-41284  
Conference Calendar

---

United States Court of Appeals  
Fifth Circuit

**FILED**  
August 8, 2007

UNITED STATES OF AMERICA

Charles R. Fulbruge III  
Clerk

Plaintiff-Appellee

v.

JUAN MANUEL GARCIA-HERNANDEZ, also known as Eduardo Hernandez, also known as Alfredo Hernandez, also known as Juan Galacia, also known as Eduardo Hernandez-Ramos, also known as Eric Hernandez, also known as Juan Hernandez-Galacia, also known as Miguel Eric Hernandez-Walker, also known as Pedro V Lopez, also known as Juan Hernandez

Defendant-Appellant

---

Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:05-CR-2685-ALL

---

Before DENNIS, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Juan Manuel Garcia-Hernandez 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.

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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