

November 9, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-50331
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HUGO ALEXANDER BERMUDEZ-CRUZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:05-CR-652

Before BARKSDALE, DeMOSS, and PRADO, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Hugo Alexander Bermudes-Cruz presents arguments that he concedes 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. Mendoza-Sanchez, 456 F.3d 479, 483 (5th Cir. 2006), which held that the district court may use all facts admitted by the defendant in determining whether the prior conviction qualifies as an enumerated offense under U.S.S.G. § 2L1.2. The Government's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.