

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

June 4, 2008

No. 07-51449
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JORGE VILLANUEVA

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:07-CR-811-ALL

Before KING, HIGGINBOTHAM, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Jorge Villanueva raises arguments that are foreclosed by *United States v. Rueda-Rivera*, 396 F.3d 678, 680 (5th Cir. 2005), which held that the admission into evidence of a Certificate of Nonexistence of Record to establish that the Government had not consented to Villanueva's presence in the United States does not violate the Confrontation Clause, and *Almendarez-Torres v. United States*, 523 U.S. 224,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

235 (1998), which held that 8 U.S.C. § 1326(b)(2) is a penalty provision and not a separate criminal offense. *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), cert. denied, 128 S. Ct. 872 (2008). The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.