

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-41351
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

EFRAIN CASTILLO-RODRIGUEZ,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-97-CR-239-1
- - - - -

April 8, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Efrain Castillo-Rodriguez appeals his judgment of conviction and sentence after pleading guilty to reentry after deportation in violation of 8 U.S.C. § 1326. He argues that he was charged with and pleaded guilty to § 1326(a), simple reentry, but that he was sentenced as if he had pleaded guilty to reentry following a conviction for an aggravated felony for purposes of § 1326(b)(2). His argument is foreclosed by the Supreme Court's decision in Almendarez-Torres v. United States, ___ U.S. ___, 1998 WL 126904, at *3, *8 (U.S. Mar. 24, 1998).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

AFFIRMED.