

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50528
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALFONSO SAUCEDO-HERNANDEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-97-CR-33-1
- - - - -

December 10, 1997

Before BARKSDALE, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Alfonso Saucedo-Hernandez appeals from his sentence for illegal reentry into the United States after his deportation in violation of 8 U.S.C. § 1326. His motion for a stay of his appeal pending the Supreme Court's decision in United States v. Almendarez-Torres, 113 F.3d 515 (5th Cir. 1996), cert. granted, 117 S. Ct. 1333 (1997), is DENIED.

Saucedo-Hernandez argues that because the indictment failed to allege that he had a prior aggravated felony conviction, he

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

could only be sentenced under § 1326(a). However, due to his prior aggravated felony conviction, Saucedo-Hernandez was sentenced under § 1326(b)(2). His argument is foreclosed by this court's opinion in United States v. Vasquez-Olvera, 999 F.2d 943, 946-47 (5th Cir. 1993).

AFFIRMED.