

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-40658  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARMELO RODRIGUEZ-REYES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-97-CR-21-1  
- - - - -

February 10, 1998

Before SMITH, EMILIO M. GARZA, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Carmelo Rodriguez-Reyes appeals his conviction and sentence for being found in the United States after deportation, in violation of 8 U.S.C. § 1326. At issue is whether § 1326(b)(2), which increases the maximum penalty for aggravated felons, makes an aggravated felony an element of the offense to be proved like any other element or is a penalty-enhancement provision.

Rodriguez-Reyes acknowledges that this court has resolved that issue against him. *See United States v. Vasquez-Olvera*, 999 F.2d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

943, 946-47 (5th Cir. 1993). Accordingly, the judgment of the district court must be affirmed.

AFFIRMED.