

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40660
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FERNANDO MORENO-RODRIGUEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-97-CR-101-1
- - - - -

April 8, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Fernando Moreno-Rodriguez appeals from his sentence for illegal reentry into the United States after his deportation in violation of 8 U.S.C. § 1326.

Moreno-Rodriguez argues that although he was charged with illegal reentry under § 1326(a) and § 1326(b)(2), he should not have been sentenced under § 1326(b)(2) because the indictment failed to allege that he had a prior aggravated felony conviction. His argument is foreclosed by the U.S. Supreme Court's opinion in Almendarez-Torres v. United States, ___ U.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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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___, 1998 WL 126904, at *3, *8 (U.S. Mar. 24, 1998).

AFFIRMED.