

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-50836  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OSCAR NOE ACOSTA-PALACIOS,  
also known as Oscar Palacios,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-97-CR-66-ALL  
- - - - -

April 10, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Oscar Noe Acosta-Palacios argues that his sentence for illegal reentry following deportation pursuant to 8 U.S.C. § 1326(b) violates principles of due process because the indictment did not allege his prior felony conviction as an element of the offense. This argument is precluded 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).

AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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