

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50885
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DIEGO RIVERA-TARANGO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. P-97-CR-76-1
- - - - -

June 16, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:*

Diego Rivera-Tarango appeals his conviction of illegal reentry following deportation. Rivera argues that the district court erred in denying his motion to dismiss the indictment because his prosecution under 8 U.S.C. § 1326(a) following his conviction under 8 U.S.C. § 1325(a) resulted in a violation of the Double Jeopardy Clause.

Rivera's argument is foreclosed by our decision in United States v. Flores-Peraza, 58 F.3d 164, 165-68 (5th Cir. 1995). We

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

are bound by that precedent. See United States v. Mathena, 23 F.3d 87, 91 (5th Cir. 1994).

The appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.

APPEAL DISMISSED.