

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-51007  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO PUENTE-AVALOS,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-97-CR-330  
- - - - -

April 8, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Pedro Puente-Avalos appeals from his sentence for illegal reentry into the United States after his deportation in violation of 8 U.S.C. § 1326. Puente argues that he could not be 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 Supreme Court's decision in Almendarez-Torres v. United States, \_\_\_ U.S. \_\_\_, 1998 WL 126904, at \*3, \*8 (U.S. Mar. 24, 1998).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Puente has filed a motion to stay his appeal pending the Supreme Court's decision in Almendarez-Torres. Puente's motion to stay his appeal is DENIED as moot.

AFFIRMED; MOTION DENIED AS MOOT.