

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40720
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GUADALUPE GARCIA-LUNA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-97-CR-118
- - - - -

April 10, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Guadalupe Garcia-Luna appeals his sentence following a guilty-plea conviction for illegal reentry into the United States after his deportation in violation of 8 U.S.C. § 1326. Garcia-Luna argues that he was charged with and pleaded guilty to simple illegal reentry under § 1326(a) and 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 U.S. Supreme Court's decision in Almendarez-Torres v. United States, ___ U.S. ___, 1998 WL 126904, at *3, *8 (U.S. Mar. 24, 1998).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 97-40710

-2-

AFFIRMED.