

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-40749  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID BENAVIDEZ-RAMIREZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-97-CR-116-1  
- - - - -

April 8, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

David Benavidez-Ramirez appeals his sentence following a guilty plea for reentry after deportation in violation of 8 U.S.C. § 1326. Benavidez-Ramirez argues that he could not be sentenced under § 1326(b) because the indictment did not allege that he had a prior 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).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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