

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-40829  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDIS MAURICIO YANEZ-REYES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-97-CR-145-1  
- - - - -

April 8, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Edis Mauricio Yanez-Reyes appeals his guilty-plea conviction and sentencing for illegal reentry after deportation in violation of 8 U.S.C. § 1326(a) and (b)(2). He argues that his conviction and sentencing for violation of 8 U.S.C. § 1326(b)(2) is legally invalid because his previous convictions were not alleged in the indictment or proved at trial beyond a reasonable doubt. He also argues that the sentencing court violated his right to due process by determining that § 1326(b)(2) is merely a sentencing enhancement of the offense delineated in § 1326(a) rather than a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

separate offense. These arguments are foreclosed by the United States Supreme Court's decision in Almendarez-Torres v. United States, \_\_\_ U.S. \_\_\_, 1998 WL 126904, at \*3, \*8 and \*10-15 (U.S. Mar. 24, 1998).

AFFIRMED.