

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-41173  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MIGUEL GARCIA-COVARUBIAS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B:97-CR-232-1  
- - - - -

February 11, 1998

Before SMITH, EMILIO M. GARZA, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Appellant Miguel Garcia-Covarubias appeals his conviction and sentence for illegal re-entry following deportation in violation of 8 U.S.C. § 1326(a) and (b)(2). Garcia-Covarubias argues that he was sentenced under 8 U.S.C. § 1326(b)(2) for a prior aggravated felony conviction and since he was charged and pleaded guilty to the elements of 8 U.S.C. § 1326(a), the Government should have alleged the prior aggravated felony in the indictment. His argument is foreclosed by this court's opinion

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

in United States v. Vasquez-Olvera, 999 F.2d 943, 946-47 (5th Cir. 1993).

AFFIRMED.