

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50463
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MIGUEL ANGEL VARGAS-VILLA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-97-CR-3
- - - - -

December 10, 1997

Before BARKSDALE, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Miguel Angel Vargas-Villa appeals his guilty-plea conviction and sentence for reentry after deportation in violation of 8 U.S.C. § 1326. Vargas-Villa has filed a motion to stay his appeal pending the Supreme Court's decision in United States v. Almendarez-Torres, 113 F.3d 515 (5th Cir. 1996), cert. granted, 117 S. Ct. 1333 (1997). Vargas-Villa's motion to stay his appeal is DENIED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Vargas-Villa argues that he was charged with and pleaded guilty to simple reentry under § 1326(a) and that he could not be sentenced under § 1326(b) because the indictment did not allege that he had a prior aggravated felony conviction. His argument is foreclosed by this court's decision in United States v. Vasquez-Olvera, 999 F.2d 943, 946-47 (5th Cir. 1993).

MOTION DENIED. AFFIRMED.