

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-50610  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SAUL RODRIGUEZ-AVILES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-97-CR-61-1  
- - - - -

December 10, 1997

Before BARKSDALE, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Saul Rodriguez-Aviles appeals from his sentence for illegal reentry after deportation in violation of 8 U.S.C. § 1326. He argues that he was charged with and pleaded guilty to simple reentry under § 1326(a) and that his sentence under § 1326(b)(2) is a violation of due process because the indictment did not allege that he had a prior aggravated felony conviction. His argument is foreclosed by this court's opinion in United States v. Vasquez-Olvera, 999 F.2d 943, 946-47 (5th Cir. 1993).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Rodriguez-Aviles' motion for a stay of 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), is DENIED.

AFFIRMED.