

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-50926  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE MARVIN AMAYA-ROSALES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-97-CR-104-ALL

- - - - -  
April 8, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Jose Marvin Amaya-Rosales appeals his guilty-plea sentencing for reentry after deportation in violation of 8 U.S.C. § 1326. He argues that the indictment charged him with simple reentry, a violation of § 1326(a), but he was sentenced as if he had pleaded guilty to reentry following an aggravated felony conviction pursuant to § 1326(b)(2). 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.