

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-50462  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RUBEN ARTURO GONZALEZ-ROBLES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. DR-96-CR-203  
- - - - -

December 10, 1997

Before BARKSDALE, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Ruben Arturo Gonzalez-Robles appeals from his sentence for illegal reentry into the United States after his deportation in violation of 8 U.S.C. § 1326. His 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.

Gonzalez-Robles argues that because the indictment failed to allege that he had a prior aggravated felony conviction, he could

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

only be sentenced under § 1326(a). However, due to his prior aggravated felony conviction, Gonzalez-Robles was sentenced under § 1326(b)(2). His argument is foreclosed by this court's opinion in United States v. Vasquez-Olvera, 999 F.2d 943, 946-47 (5th Cir. 1993).

AFFIRMED.