

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-50834  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS JUAN ROSALES-BARRAZA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-97-CR-54-1-H  
- - - - -

April 10, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Appellant Luis Juan Rosales-Barraza (Rosales) appeals his conviction and sentence for illegal re-entry following deportation in violation of 8 U.S.C. § 1326. Rosales 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 the Supreme Court's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

decision in Almendarez-Torres v. United States, \_\_\_ U.S. \_\_\_,  
1998 WL 126904, at \*3, \*8 (U.S. Mar. 24, 1998).

AFFIRMED.