

# Appendix A

## United States v. Garcia-Montejo

United States Court of Appeals for the Fifth Circuit

August 31, 2018, Filed

No. 18-40051 Summary Calendar

### **Reporter**

736 Fed. Appx. 94 \*; 2018 U.S. App. LEXIS 24910 \*\*; 2018 WL 4191038

UNITED STATES OF AMERICA, Plaintiff-Appellee v. RENE GARCIA-MONTEJO, also known as Bibian Garcia-Montejo, Defendant-Appellant

**Notice:** PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Prior History:** **[\*\*1]** Appeal from the United States District Court for the Southern District of Texas. USDC No. 1:17-CR-519-1.

**Disposition:** AFFIRMED.

### **Core Terms**

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district court, guilty plea, plain error, admonishment

**Counsel:** For United States of America, Plaintiff - Appellee: Audrey Lynn Maness, Carmen Castillo Mitchell, Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of Texas, Houston, TX.

For Rene Garcia-Montejo, also known as: Bibian Garcia-Montejo, Defendant - Appellant: John Andrew Kuchera, Waco, TX.

**Judges:** Before JOLLY, COSTA, and HO, Circuit Judges.

### **Opinion**

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**[\*94] PER CURIAM:\***

Rene Garcia-Montejo pleaded guilty to being found in the United States after being previously removed. The district court sentenced Garcia-Montejo to 46 months of imprisonment and three years of supervised release. On appeal, Garcia-Montejo argues that his guilty plea is invalid because the district court failed to comply with Federal Rule of Criminal Procedure 11(b)(1)(G) by failing to address the "official restraint" element of the offense during the plea colloquy. He contends that because he was under constant surveillance prior to being apprehended, he was never free from official restraint and could not have committed the charged offense. Because Garcia-Montejo did not raise this issue before the district court,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

our review is for plain error. *United States v. Vonn*, 535 U.S. 55, 58-59, 122 S. Ct. 1043, 152 L. Ed. 2d 90 (2002).

In *United States v. Rojas*, 770 F.3d 366, 368 (5th Cir. 2014), we stated that [\*\*2] we had mentioned but never explicitly adopted the official restraint doctrine. We ordinarily do not find plain error where we have not addressed an issue previously. *United States v. Evans*, 587 F.3d 667, 671 (5th Cir. 2009). The district court's admonishment contained all of the elements of a 8 U.S.C. § 1326 violation, and Garcia-Montejo indicated that he understood those elements. See *United States v. Flores-Peraza*, 58 F.3d 164, 166 (5th Cir. 1995). The admonishments provided by the district court were sufficient under Rule 11(b)(1)(G). See *United States v. Lujano-Perez*, 274 F.3d 219, 224 (5th Cir. 2001). Garcia-Montejo has not shown that the district court plainly erred under Rule 11(b)(1)(G). See *Puckett v. United States*, 556 U.S. 129, 135, 129 S. Ct. 1423, 173 L. Ed. 2d 266 (2009).

AFFIRMED.

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