

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JUAN CORENO-GARAY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

/s/ Brandon Beck

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Appendix A Judgment and Opinion of Fifth Circuit, CA No. 21-10149,
United States v. Coreno-Garay, 2021. U.S. App. LEXIS 31763 (5th Cir.
Oct. 21, 2021. (unpublished)

Appendix B Judgment and Sentence of the United States District
Court for the Northern District of Texas, entered February 9, 2021.
United States v. Coreno-Garay, Dist. Court 4:20-CR-265-Y.

APPENDIX A

United States v. Coreno-Garay

United States Court of Appeals for the Fifth Circuit

October 21, 2021, Filed

No. 21-10149 Summary Calendar

Reporter

2021 U.S. App. LEXIS 31763 *; 2021 WL 4932227

UNITED STATES OF AMERICA, Plaintiff—Appellee,
versus JUAN CORENO-GARAY, 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Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.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 Northern District of Texas. USDC No. 4:20-CR-265-1.

United States v. Coreno-Garay, 2020 U.S. Dist. LEXIS 206798 (N.D. Tex., Nov. 5, 2020)

Counsel: For United States of America, Plaintiff - Appellee:
Leigha Amy Simonton, Assistant U.S. Attorney, U.S.
Attorney's Office, Northern District of Texas, Dallas, TX.

For Juan Coreno-Garay, Defendant - Appellant: Brandon
Elliott Beck, Federal Public Defender's Office, Northern
District of Texas, Lubbock, TX; Michael Arthur Lehmann,
Federal Public Defender's Office, Northern District of Texas,
Fort Worth, TX.

Judges: Before JOLLY, WILLETT, and ENGELHARDT,
Circuit Judges.

Opinion

PER CURIAM:*

Juan Coreno-Garay appeals his sentence for illegally reentering the United States after removal. *See* 8 U.S.C. § 1326(a), (b)(1). He contends that the district court erred in sentencing him under § 1326(b)(1)—specifically by imposing a supervised release term of more than one year—because the

fact of his prior felony conviction was neither pleaded in the information nor found by a jury beyond a reasonable doubt. Coreno-Garay concedes that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed. 2d 350 (1998), and he raises it only to preserve the issue for further review. The Government moves for summary affirmance or, alternatively, for an extension of time to file a merits brief.

Almendarez-Torres forecloses relief [*2] on Coreno-Garay's claim of sentencing error. Accordingly, the motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. *See* *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The Government's alternative motion for an extension of time is DENIED as moot.

End of Document

* Pursuant to *5TH CIRCUIT RULE 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 CIRCUIT RULE 47.5.4*.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 4:20-CR-265-Y(1)

M. Levi Thomas, assistant U.S. attorney

JUAN CORENO-GARAY

Michael A. Lehmann, attorney for the defendant

On October 21, 2020, the defendant, Juan Coreno-Garay, entered a plea of guilty to count one of the one-count information. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
8 U.S.C. § 1326(a) and (b)(1)	Illegal Reentry After Deportation	September 20, 2020	1

The defendant is sentenced as provided in pages two through three of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count information.

The defendant shall notify the United States attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed February 9, 2021.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed February 10, 2021.

IMPRISONMENT

The defendant, Juan Coreno-Garay, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 21 months on count one of the one-count information. This sentence shall run consecutively to any future sentence that may be imposed in Tarrant County Criminal Court No. 5, Tarrant County, Texas, under case no. 1657250.

The defendant is remanded to the custody of the United States marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years on count one of the one-count information.

Under 18 U.S.C. § 3583(d), as a condition of supervised release upon the completion of the sentence of imprisonment, the defendant shall be surrendered by the Federal Bureau of Prisons to a duly authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a condition of supervised release, if ordered deported, the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions recommended by the U.S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapons;

cooperate in the collection of DNA as directed by the probation officer, as authorized by the Justice for All Act of 2004;

report in person to the probation office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry;

not illegally re-enter the United States, if deported, removed, or allowed voluntary departure;
and

refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States marshal

BY _____
deputy marshal