

No. _____

In the Supreme Court of the United States

FILEMON CORONA-GALINDO,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT,

PETITION APPENDIX

Opinion, <i>United States v. Corona-Galindo</i> , No. 24-10195 (5th Cir. Oct. 25, 2024)	1a
Judgment of Conviction and Sentence, <i>United States v. Corona-Galindo</i> , No. 4:23-cr-287 (N.D. Tex. Feb. 29, 2024)	3a
Factual Resume, <i>United States v. Corona-Galindo</i> , No. 4:23-cr-287 (N.D. Tex. filed Nov. 8, 2023)	6a
Indictment, <i>United States v. Corona-Galindo</i> , No. 4:23-cr-287 (N.D. Tex. filed Oct. 12, 2023)	8a

United States Court of Appeals for the Fifth Circuit

No. 24-10195
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
October 25, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

FILEMON CORONA-GALINDO,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:23-CR-287-1

Before DAVIS, STEWART, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:*

Filemon Corona-Galindo appeals his conviction and sentence for illegal reentry into the United States after having been previously removed in violation of 8 U.S.C. § 1326(a) and (b)(1). He renews his preserved argument that the recidivism enhancement in § 1326(b) is unconstitutional because it permits a sentence above the otherwise-applicable statutory maximum

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

No. 24-10195

established by § 1326(a) based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. His 36-month term of imprisonment exceeds the maximum in § 1326(a), and his two-year term of supervised release is only authorized by § 1326(b), by virtue of 18 U.S.C. §§ 3559(a)(3) and 3583(b)(2).

Corona-Galindo acknowledges that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he nevertheless seeks to preserve it for possible Supreme Court review. The Government has moved, without opposition, for summary affirmance or, alternatively, for an extension of time to file its brief.

This court has held that subsequent Supreme Court decisions such as *Alleyne v. United States*, 570 U.S. 99 (2013), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), did not overrule *Almendarez-Torres*. See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). Corona-Galindo is thus correct that his argument is foreclosed. Because the Government’s position “is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case,” summary affirmance is appropriate. *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

The Government’s motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government’s alternative motion for an extension of time is DENIED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

FILEMON CORONA-GALINDO

Case Number: 4:23-CR-287-Y(1)

M. Levi Thomas, assistant U.S. attorney

Michael A. Lehmann, attorney for the defendant

On November 8, 2023, the defendant, Filemon Corona-Galindo, entered a plea of guilty to count one of the one-count indictment. 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) & (b)(1)	Illegal Reentry After Deportation	August 14, 2023	1

The defendant is sentenced as provided in page two 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 indictment.

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 27, 2024.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed February 29, 2024.

24-10195.49

IMPRISONMENT

The defendant, Filemon Corona-Galindo, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 36 months on count one of the one-count indictment, to run consecutively to the undischarged term of imprisonment in the 432nd Judicial District Court, Tarrant County, Texas, under case no. 1791699.

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 2 years on count one of the one-count indictment.

The defendant, while on supervised release, shall 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 weapon;
- 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 within 72 hours of release from the custody of the Federal Bureau of Prisons;
- not illegally re-enter the United States, if deported, removed, or allowed voluntary departure; and
- participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

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.

24-10195.50

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

24-10195.51

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

FILEMON CORONA-GALINDO (01)

No. 4:23-CR-287-Y

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
NOV - 8 2023
CLERK, U.S. DISTRICT COURT
By Deputy

FACTUAL RESUME

I. Plea:

Count One: Illegal Reentry after Deportation, in violation of 8 U.S.C. § 1326(a) & (b)(1).

II. Maximum Penalties:

The maximum penalties the Court can impose include:

- a. a term of imprisonment of ten (10) years;
- b. a fine of \$250,000;
- c. a term of supervised release of three (3) years. If the defendant violates the conditions of supervised release, he could be imprisoned for an additional period of confinement;
- d. a mandatory special assessment of \$100; and
- e. pleading guilty may have consequences with respect to the defendant's immigration status, including removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the district court, can predict to a certainty the effect of his conviction on his status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the consequences include his automatic removal from the United States.

Factual Resume – Page 1

24-10195.33

III. Essential Elements of the Offense:

In order to establish the offense alleged in Count One, the government must prove the following elements beyond a reasonable doubt:

- First: That on or about the date alleged, the defendant was an alien;
- Second: That the defendant was previously removed from the United States;
- Third: That the defendant was found in the United States; and
- Fourth: That the defendant had not received the express consent of either the Attorney General of the United States or the Secretary of the Department of Homeland Security to reapply for admission to the United States since the time of the defendant's previous removal.

IV. Stipulation of Facts:

Filemon Corona-Galindo (Corona) is a citizen and national of Mexico, born in Dolores Hidalgo, Guanajuato, Mexico. On December 28, 2012, Corona was deported and removed to Mexico through Laredo, Texas. On August 14, 2023, Corona was encountered by immigration authorities at the Tarrant County Jail in Fort Worth, Texas, within the Federal Northern District of Texas. Corona had re-entered the United States illegally, and he had not applied for nor received permission from the Attorney General of the United States or the Secretary of the Department of Homeland Security to reapply for admission to the United States at any time after being deported.

SIGNED on this the 31 day of October, 2023.

Filemon Corona
FILEMON CORONA-GALINDO
Defendant


MICHAEL LEHMANN
Attorney for Defendant

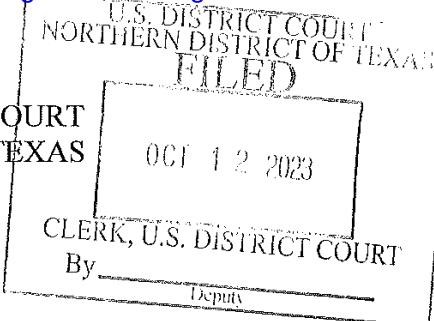
ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

FILEMON CORONA-GALINDO (01)



No.

4 - 23 CR- 287 - y

INDICTMENT

The Grand Jury Charges:

Count One

Illegal Reentry After Deportation
(Violation of 8 U.S.C. § 1326(a) and (b)(1))

On or about August 14, 2023, in the Fort Worth Division of the Northern District of Texas, defendant, **Filemon Corona-Galindo**, an alien, was found in the United States having previously been deported and removed from the United States on or about December 28, 2012, and the defendant had not received the consent of the Attorney General of the United States or the Secretary of the Department of Homeland Security, to reapply for admission to the United States.

In violation of 8 U.S.C. § 1326(a) and (b)(1).

A TRUE BILL.



Ronald T. Johnson
FOREPERSON

LEIGHA SIMONTON
UNITED STATES ATTORNEY



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Indictment - Page 2 of 2

24-10195.8