

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

March 31, 2020

Lyle W. Cayce
Clerk

No. 19-50736
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ROSALIO HERNANDEZ-ARMENDARIZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:18-CR-680-1

Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:*

Rosalio Hernandez-Armendariz appeals his conviction for alien smuggling in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (B)(i). He argues that the district court erred in denying his motion to withdraw his guilty plea.

Hernandez-Armendariz concedes that because he did not object to the magistrate judge's report recommending the denial of his motion, our review is for plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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1420-23, 1428-29 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1). To establish plain error, he must show (1) an error that has not been affirmatively waived, (2) that is clear or obvious, and (3) that affects his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes such a showing, we have the discretion to correct the error but will do so only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*; *see also Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1905 (2018).

In evaluating the denial of a motion to withdraw a guilty plea, we consider the totality of circumstances, including the seven factors enumerated in *United States v. Carr*, 740 F.2d 339, 343-44 (5th Cir. 1984). The district court considered each of the seven factors and found that all of them militated against allowing withdrawal of the plea. We see no clear or obvious error in the district court's decision. *See Puckett*, 556 U.S. at 135; *see also United States v. Lord*, 915 F.3d 1009, 1013-17 (5th Cir.), *cert. denied*, 140 S. Ct. 320 (2019).

AFFIRMED.