

United States Court of Appeals for the Fifth Circuit

No. 26-10090
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 29, 2026

Thomas B. Plunkett, III
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

PEDRO GARCIA LOPEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:25-CR-268-1

Before ELROD, *Chief Judge*, and WILSON and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

Pedro Garcia Lopez appeals his conviction and within-guidelines sentence for illegally reentering the United States, in violation of 8 U.S.C. § 1326. He asserts for the first time that the district court erred by convicting and sentencing him under the enhanced penalty provision of § 1326(b)(2) because he did not have an aggravated felony conviction prior to removal. Lopez is correct that, because his prior convictions resulted in deferred

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

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adjudication probation, he did not sustain an aggravated felony conviction prior to his removal. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 369 (5th Cir. 2009). However, he fails to demonstrate that the error affected his substantial rights, defeating his claim on plain error review. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). Nevertheless, the written judgment's citation of "§ 1326(a) and (b)(2)" constitutes an error that should be corrected. *See United States v. Gomez Gomez*, 23 F.4th 575, 577–78 (5th Cir. 2022). Accordingly, the case should be remanded for reformation of the judgment to reflect a conviction and sentence under § 1326(b)(1). *See id.* at 578.

Lopez also contends that the term of supervised release imposed by the district court was unreasonable because it was not based on individualized considerations. The record reflects that the district court conducted an individualized assessment, relying on appropriate factors in 18 U.S.C. § 3553(a) and Lopez's criminal history, and determined that a term of supervised release was necessary to protect the public and provide an added measure of deterrence. *See United States v. Dominguez-Alvarado*, 695 F.3d 324, 329 (5th Cir. 2012). The term of supervision was within the range authorized by 18 U.S.C. § 3583(b). Accordingly, Lopez has failed to demonstrate that the district court abused its discretion by imposing a term of supervised release in this case. *See United States v. Rodriguez*, 558 F.3d 408, 411 (5th Cir. 2009); *Gall v. United States*, 552 U.S. 38, 51 (2007).

Finally, the parties are correct that Lopez's argument that the recidivism enhancement in § 1326(b) is unconstitutional is foreclosed. *See United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019); *see also Erlinger v. United States*, 602 U.S. 821, 838 (2024).

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For the foregoing reasons, we AFFIRM Lopez's conviction and sentence, but we REMAND for reformation of the judgment to reflect a conviction and sentence under § 1326(b)(1).