

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

No. 17-40133
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
October 27, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARIO ALBERTO CORDOVA-ZARATE,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:16-CR-787-1

Before WIENER, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Mario Alberto Cordova-Zarate appeals his 27-month sentence of imprisonment for illegally reentering the United States after deportation following a felony conviction. 8 U.S.C. § 1326(a), (b)(1). He argues that the district court erred in recommending that he receive credit for time he spent in state custody before his transfer to federal custody because the recommendation does not have binding effect.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Cordova-Zarate did not object when the district court made the recommendation at his sentencing hearing. Accordingly, we review the issue for plain error. *United States v. Kirklin*, 701 F.3d 177, 178 (5th Cir. 2012).

The Attorney General, through the Bureau of Prisons (BOP), determines what credit, if any, will be awarded. 18 U.S.C. § 3585(b); *see Leal v. Tombone*, 341 F.3d 427, 428 (5th Cir. 2003). Because a non-binding recommendation could serve the salutary purpose of alerting the BOP to time the defendant spent in state custody that might apply to his federal sentence, Cordova-Zarate fails to show that the recommendation amounted to clear or obvious error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

AFFIRMED.