

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

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No. 15-50301  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

November 12, 2015

Lyle W. Cayce  
Clerk

Consolidated with No. 15-50302

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN CARLOS MARTINEZ-VALDEZ,

Defendant-Appellant

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Appeals from the United States District Court  
for the Western District of Texas  
USDC No. 3:14-CR-105-1  
USDC No. 3:14-CR-2253-1

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Before JOLLY, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:\*

Juan Carlos Martinez-Valdez appeals the 13-month sentence he received following his guilty plea conviction for illegal reentry, as well as the six-month sentence he received following the revocation of his supervised release. Three

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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months of the six-month revocation sentence were ordered to be served consecutively to the non-revocation sentence.

Martinez-Valdez argues that his aggregate 19-month sentence is substantively unreasonable because it is greater than necessary to effectuate the sentencing goals of 18 U.S.C. § 3553(a). He asserts that his illegal reentry offense is essentially a nonviolent international trespass and that the illegal reentry Guideline, U.S.S.G. § 2L1.2, is problematic because it is not empirically based, atypically establishes an offense level based on prior criminal conduct, and effectively double counts the defendant's criminal history in calculating a guidelines range. He also argues that his sentence fails to adequately account for his personal history and characteristics, including his benign reasons for reentry and his nonviolent criminal history. We review these newly raised claims for plain error only. *United States v. Peltier*, 505 F.3d 389, 391-92 (5th Cir. 2007). Martinez-Valdez concedes that plain error review applies, but he seeks to preserve, for possible further review, his contention that no objection to the reasonableness of a sentence is required.

When, as here, the district court imposes a sentence within a properly calculated guidelines range, the sentence is presumptively reasonable. *United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009). To rebut this presumption, Martinez-Valdez must show “that the sentence does not account for a factor that should receive significant weight, it gives significant weight to an irrelevant or improper factor, or it represents a clear error of judgment in balancing sentencing factors.” *Id.*

As Martinez-Valdez acknowledges, his argument that the presumption of reasonableness should not apply because § 2L1.2 lacks an empirical basis is foreclosed, and he raises it only to preserve it for further review. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 366-67 (5th Cir. 2009). We

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likewise have previously rejected the contention that a within-guidelines sentence is unreasonable because § 2L1.2 lacks an empirical basis and effectively double counts prior convictions. *See United States v. Duarte*, 569 F.3d 528, 529-31 (5th Cir. 2009); *Mondragon-Santiago*, 564 F.3d at 366-67 & n.7. Also, we have not been persuaded by the claim that the Sentencing Guidelines do not take into account the nonviolent nature of an illegal reentry offense. *See United States v. Juarez-Duarte*, 513 F.3d 204, 212 (5th Cir. 2008). Martinez-Valdez's alleged benign motive for returning to this country is insufficient to rebut the presumption of reasonableness attached to his within-guidelines illegal reentry sentence. *See United States v. Gomez-Herrera*, 523 F.3d 554, 565-66 (5th Cir. 2008).

Insofar as Martinez-Valdez challenges the fact that part of his revocation sentence was ordered to be served consecutively to his non-revocation sentence, his challenge is unavailing. Because his six-month revocation sentence falls within the applicable advisory guidelines range and is consistent with U.S.S.G § 7B1.3(f), p.s. (mandating “[a]ny term of imprisonment imposed upon the revocation of . . . supervised release shall be ordered to be served consecutively to any sentence of imprisonment that the defendant is serving”), it is entitled to a presumption of reasonableness. *See, e.g., United States v. Lopez-Velasquez*, 526 F.3d 804, 808-09 (5th Cir. 2008) (citation omitted); *United States v. Candia*, 454 F.3d 468, 474 (5th Cir. 2006). Martinez-Valdez has made no effort to rebut the presumption of reasonableness afforded his revocation sentence.

Martinez-Valdez has failed to show that his sentences amount to error, plain or otherwise. Accordingly, the district court's judgment is AFFIRMED.