

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

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No. 15-50090  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

September 1, 2015

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LEONARDO JABALERA-CHAVIRA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:14-CR-1961-1

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Before STEWART, Chief Judge, and DAVIS and GRAVES, Circuit Judges.

PER CURIAM:\*

Leonardo Jabalera-Chavira appeals the within-guidelines, 24-month sentence imposed for his guilty plea conviction for illegal reentry. He contends that his sentence is substantively unreasonable and greater than necessary to satisfy the 18 U.S.C. § 3553(a) factors.

We review the substantive reasonableness of the sentence for an abuse of discretion. *Gall v. United States*, 552 U.S. 38, 41 (2007). Jabalera-Chavira's

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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arguments fail to rebut the presumption of reasonableness that we apply to his within-guidelines sentence. *See United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009); *United States v. Campos-Maldonado*, 531 F.3d 337, 338 (5th Cir. 2008). The district court, which was “in a superior position to find facts and judge their import under § 3553(a),” was presented with Jabalera-Chavira’s mitigating arguments but concluded that a sentence within the guidelines range was reasonable. *Campos-Maldonado*, 531 F.3d at 339. We have held that “the staleness of a prior conviction used in the proper calculation of a guidelines-range sentence does not render a sentence substantively unreasonable and does not destroy the presumption of reasonableness that attaches to such sentences.” *United States v. Rodriguez*, 660 F.3d 231, 234 (5th Cir. 2011). We have also rejected substantive reasonableness challenges based on the alleged lack of seriousness of illegal reentry. *United States v. Juarez-Duarte*, 513 F.3d 204, 212 (5th Cir. 2008); *United States v. Aguirre-Villa*, 460 F.3d 681, 683 (5th Cir. 2006). As Jabalera-Chavira concedes, his argument that the presumption of reasonableness should not be applied to his sentence because U.S.S.G. § 2L1.2 lacks an empirical basis is foreclosed. *See United States v. Duarte*, 569 F.3d 528, 530-31 (5th Cir. 2009); *United States v. Mondragon-Santiago*, 564 F.3d 357, 366-67 (5th Cir. 2009).

The judgment of the district court is AFFIRMED.