

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

United States Court of Appeals  
Fifth Circuit

**FILED**

March 30, 2020

Lyle W. Cayce  
Clerk

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No. 19-10300  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAVIER LOPEZ-GARCIA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:18-CR-342-1

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Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

PER CURIAM:\*

Javier Lopez-Garcia appeals the sentence imposed on his conviction of illegal reentry into the United States. The district court varied upward from the guidelines range and sentenced Lopez-Garcia to 60 months of imprisonment, an upward variance from his guidelines range of 24 to 30 months. Lopez-Garcia argues the district court sentenced him based in part on

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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a clearly erroneous finding that he attempted to evade arrest by driving his van into one of the vehicles of the arresting agents.

We review the district court's factual findings for clear error. *See United States v. Davis*, 754 F.3d 278, 284 (5th Cir. 2014). "A factual finding is not clearly erroneous if it is plausible in light of the record as a whole." *Id.* We give particular deference to credibility determinations in sentencing hearings. *Id.* at 285 (citation omitted). Here, the district court's conclusion that Lopez-Garcia attempted to evade arrest by reversing his van into one of the vehicles of the arresting agents was supported by ICE and DHS records describing the circumstances of the collision. The district court also questioned Lopez-Garcia at sentencing about his contention that he moved his van in order to avoid another approaching law-enforcement vehicle. In light of all the evidence, including the testimony, the district court found that Lopez-Garcia was attempting to evade arrest.

Considering the same evidence, we conclude Lopez-Garcia has not shown that the district court clearly erred.

**AFFIRMED.**