

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

October 2, 2023

Lyle W. Cayce  
Clerk

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No. 23-40074  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

MARIO ALBERTO NETRO-PERALES,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:22-CR-867-1

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Before KING, HAYNES, and GRAVES, *Circuit Judges.*

PER CURIAM:\*

Mario Alberto Netro-Perales appeals his sentence for his guilty plea conviction for being an alien who was unlawfully present in the United States after deportation. After denying Netro-Perales's motion for a downward departure, the district court imposed a within-guidelines term of 21 months of imprisonment and three years of supervised release.

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

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In his first argument, Netro-Perales contends that the district court erred by deferring to the Guidelines commentary when denying his motion for a downward departure. We may review a downward-departure denial only if “the district court held a mistaken belief that the Guidelines do not give it the authority to depart.” *United States v. Sam*, 467 F.3d 857, 861 (5th Cir. 2006). To the extent that Netro-Perales relies on *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), in support of his assertion that the Guidelines commentary is not due any deference, that assertion is repudiated by our recent decision in *United States v. Vargas*, 74 F.4th 673, 680-83 (5th Cir. 2023) (en banc). Although the record does not indicate that the district court relied on the Guidelines commentary to deny the downward departure motion, Netro-Perales has not shown any error in that regard even if the district court did rely on that commentary.

Netro-Perales also contends that the district court erred by counting his prior illegal reentry convictions for purposes of a sentencing enhancement and to determine his criminal history category. Our review is for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). As noted by the Government, Netro-Perales’s argument is identical to the one rejected by this court in *United States v. Cordova-Lopez*, 34 F.4th 442, 444-46 (5th Cir. 2022). Netro-Perales has failed to show any plain error.

The district court’s judgment is AFFIRMED.