

# United States Court of Appeals for the Fifth Circuit

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No. 23-50518  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

May 6, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

ERNESTO ALBA VASQUEZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:23-CR-11-1

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Before BARKSDALE, GRAVES, and OLDHAM, *Circuit Judges*.

PER CURIAM:\*

Ernesto Alba Vasquez pleaded guilty to transportation of illegal aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii). He asserts the district court reversibly erred by accepting his guilty plea without a sufficient factual basis. He concedes there is a sufficient factual basis for his guilty plea in his

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

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presentence investigation report (PSR) but contends our court should not consider those facts.

Vasquez (as he also concedes) did not preserve this issue in district court; therefore, review is only for plain error. *E.g.*, *United States v. Broussard*, 669 F.3d 537, 546 (5th Cir. 2012). Under that standard, Vasquez must show a forfeited plain error (clear-or-obvious error, rather than one subject to reasonable dispute) that affected his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes that showing, we have the discretion to correct the reversible plain error, but generally should do so only if it “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings”. *Id.* (citation omitted).

Our court considers the entire record, including the PSR, on plain-error review of a factual basis’ sufficiency. *E.g.*, *United States v. Barton*, 879 F.3d 595, 599 (5th Cir. 2018). Consequently, Vasquez has not shown the requisite clear-or-obvious error because, as he correctly concedes, the plea colloquy and PSR establish a sufficient factual basis to support his guilty plea. *See United States v. Marek*, 238 F.3d 310, 314 (5th Cir. 2001) (*en banc*) (“[Federal Rule of Criminal Procedure] 11 requires the district court to determine that the *factual* conduct to which the defendant admits is sufficient *as a matter of law* to constitute a violation of the statute”. (emphasis in original)); *United States v. Gaspar-Felipe*, 4 F.4th 330, 341 (5th Cir. 2021) (listing § 1324(a)(1)(A)(ii) elements).

AFFIRMED.