

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

No. 18-10685
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 26, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LUIS DAVID MORENO-PENA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-3-1

Before HIGGINBOTHAM, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:*

Luis David Moreno-Pena appeals his 78-month, above-guidelines sentence for illegal reentry following deportation, arguing, for the first time on appeal, that it is procedurally unreasonable because the district court's sentencing explanation failed to address his request for a variance based on his time spent in pre-indictment state custody. Although he concedes that he did not timely object to the district court's explanation, Moreno-Pena contends

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

No. 18-10685

that this issue should be reviewed de novo in light of *Chavez-Meza v. United States*, 139 S. Ct. 1959 (2018). We adhere to our established precedent, see *United States v. Boche-Perez*, 755 F.3d 327, 334 (5th Cir. 2014) (rule of orderliness), and we review for plain error, see *United States v. Mondragon-Santiago*, 564 F.3d 357, 364 (5th Cir. 2009).

Moreno-Pena does not undertake any plain error analysis and has therefore waived any argument that plain error occurred. See *United States v. Ledezma-Cepeda*, 894 F.3d 686, 692 (5th Cir.), *cert. denied*, 139 S. Ct. 467 (2018). As a result, he fails to show reversible plain error. See *Puckett v. United States*, 556 U.S. 129, 135 (2009). The judgment is AFFIRMED.