

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAVIER FRANCISCO PEREZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

/s/ Taylor Wills Edwards “T.W.” Brown
Taylor Wills Edwards “T.W.” Brown
Assistant Federal Public Defender
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Appendix A Opinion of Fifth Circuit, CA No. 23-11245,
United States v. Perez, No. 23-11245, 2024 WL 4471502
(5th Cir. Oct. 11, 2024)(unpublished)

Appendix B Judgment and Sentence of the United States District Court for the
Northern District of Texas, entered December 12, 2023,
United States v. Perez, Dist. Court No. 3:13-CR-173-L.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 23-11245
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 11, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JAVIER FRANCISCO PEREZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:13-CR-173-1

Before KING, SOUTHWICK, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Javier Francisco Perez appeals the revocation of his supervised release and sentence of 30 months of imprisonment. He asserts that the district court erred when it concluded that his charge under Texas Penal Code § 22.01(b)(2)(B) constituted a Grade A supervised release violation under U.S.S.G. § 7B1.1(a)(1). Specifically, Perez argues that in light of *United*

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

No. 23-11245

States v. Greer, 20 F.4th 1071, 1075 (5th Cir. 2021), the assault cannot be deemed a “crime of violence” under the categorical approach because it can be committed recklessly.

As Perez concedes, review is for plain error. To demonstrate plain error, he must show that (1) there is an error, (2) the error is clear or obvious, rather than subject to reasonable dispute, and (3) the error affected his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes this showing, we will exercise our discretion to correct the error only if it “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (quotation and brackets omitted). Satisfying all four prongs of the test “is difficult.” *Id.*

There is a circuit split regarding whether the categorical approach applies to § 7B1.1(a)(1), and we have not yet addressed the issue. *See United States v. Patel*, No. 22-10021, 2022 WL 17246941, at *1 n.1 (5th Cir. Nov. 28, 2022) (unpublished). Because this circuit’s law remains unsettled and other circuits have reached divergent conclusions, the district court’s consideration of Perez’s actual conduct rather than the categorical approach to determine if the assault met the crime-of-violence definition was not clear or obvious error. *See United States v. Salinas*, 480 F.3d 750, 759 (5th Cir. 2007).

The judgment of the district court is AFFIRMED.

APPENDIX B

United States District Court

Northern District of Texas

Dallas Division

UNITED STATES OF AMERICA

v.

Case Number 3:13-CR-173-L (01)

JAVIER FRANCISCO PEREZ

Defendant

JUDGMENT IN A CRIMINAL CASE

(For **Revocation** of Probation or Supervised Release)

(For Offenses Committed On or After November 1, 1987)

The defendant, JAVIER FRANCISCO PEREZ, was represented by Catalina Hotung.

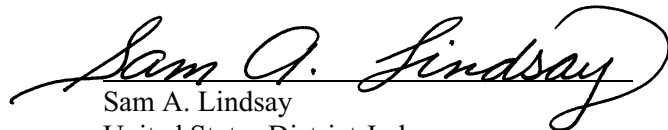
THE DEFENDANT:

Pleaded true to two violations of conditions of the term of supervision, and not true to three violations of the term of supervision. The court found that Defendant has violated the terms of his supervision.

As pronounced on December 11, 2023, the defendant is sentenced as provided in pages 1 and 2 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Signed this the 12th day of December, 2023.



Sam A. Lindsay

United States District Judge

Defendant: JAVIER FRANCISCO PEREZ
Case Number: 3:13-CR-173-L (01)

Judgment--Page 2 of 2

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **Thirty (30) months**.

The court recommends that Defendant be allowed to serve his sentence at FCI Seagoville and that he be allowed to participate in the Residential Drug Abuse Treatment Program, if he is eligible.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal