

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 4, 2022

Lyle W. Cayce
Clerk

No. 21-51012

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EDGAR FITZ-MALDONADO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-500-1

Before JOLLY, WILLET, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Edgar Fitz-Maldonado pleaded guilty to illegal reentry under 8 U.S.C. § 1326(a). He was sentenced to thirty-seven months of imprisonment—pursuant to the recidivism enhancement in § 1326(b)—and three years of supervised release. Fitz-Maldonado now argues, for the first time, that the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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recidivism enhancement is unconstitutional because it turns on facts that are neither alleged in the indictment nor found beyond a reasonable doubt.

Fitz-Maldonado correctly concedes his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *E.g.*, *United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019) (holding the same). Instead, he briefs the issue (alongside his unopposed motion for summary disposition in favor of the Government) to preserve his challenge for potential review by the Supreme Court. Summary disposition is therefore appropriate. *E.g.*, *United States v. Garza-De La Cruz*, 16 F.4th 1213, 1213–14 (5th Cir. 2021) (per curiam) (same issue); *see also, e.g., Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

The motion is GRANTED, and we AFFIRM.