

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12673
Non-Argument Calendar

D.C. Docket No. 3:19-cr-00038-MMH-JBT-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO FERNANDEZ-DE CAMPA,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(April 16, 2020)

Before WILLIAM PRYOR, MARTIN and ROSENBAUM, Circuit Judges.

PER CURIAM:

Pedro Fernandez-de Campa appeals his sentence of 30 months of imprisonment following his plea of guilty to reentering the United States illegally. 8 U.S.C. § 1326. Fernandez-de Campa argues that his sentence is procedurally unreasonable because the district court failed to state the reasons for its chosen sentence. He also argues that his sentence is unconstitutional because his maximum statutory sentence was increased based on the fact of a prior conviction that was not alleged in his indictment or admitted by him. We affirm.

Fernandez-de Campa's sentence is procedurally reasonable. The explanation provided by district court, "though brief, was legally sufficient" to establish that it "considered the parties' arguments and [had] a reasoned basis" for its chosen sentence. *See Rita v. United States*, 551 U.S. 338, 356 (2007). The district court "reviewed . . . [Fernandez-de Campa's] sentencing memorandum" and "heard from counsel and from Mr. Fernandez-de Campa" concerning his request for a downward variance from his recommended guideline range of 30 to 37 months of imprisonment. The district court considered Fernandez-de Campa's arguments that a lenient sentence would account for his difficult childhood, his ongoing support of his wife and three stepdaughters living in the United States, how deportation was a "harsh[] consequence" for him due to his age, and how his deportation would deter other aliens from entering the country illegally. The district court also "reviewed the presentence report" and considered the prosecutor's argument that sentencing

Fernandez-de Campa to 37 months of imprisonment was required to punish him for reentering the United States illegally a third time after deportation, to deter him from committing future similar crimes, and to account for his criminal history score of IV, which included his convictions for conspiring to distribute marijuana, driving while intoxicated, and petty theft. The district court selected a sentence of 30 months of imprisonment based on “Title 18, United States Code §§ 3551 and 3553” The district court stated its reasons for sentencing Fernandez-de Campa to a term at the low end of his guideline range.

Fernandez-de Campa concedes that his challenge to the constitutionality of his sentence is foreclosed by precedent. In *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), the Supreme Court held that a prior conviction “relevant only to the sentencing of an offender found guilty of the charged crime” does not have to be charged in an indictment or proved beyond a reasonable doubt to a jury, even if it increases the defendant’s maximum statutory sentence. *Id.* at 228–47.

Almendarez-Torres remains the law until overruled by the Supreme Court, which it declined to do in *Alleyne v. United States*, 570 U.S. 99 (2013). *Id.* at 111 n.1.

We **AFFIRM** Fernandez-de Campa’s sentence.

APPENDIX B

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES OF AMERICA

v.

PEDRO FERNANDEZ-DE CAMPA

Case Number: 3:19-cr-38-J-34JBT

USM Number: 31591-018

**Lisa Call, FPD
Suite 1240
200 W. Forsyth St.
Jacksonville, FL 32202**

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Count One of the Indictment. The defendant is adjudicated guilty of this offense:


<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
8 U.S.C. § 1326	Being Unlawfully Present in the United States after Previously Being Deported or Removed	December 2018	One

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that the defendant must 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. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence:

July 1, 2019


MARCIA MORALES HOWARD
UNITED STATES DISTRICT JUDGE

July 1, 2019

Pedro Fernandez-De Campa
3:19-cr-38-J-34JBT

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **THIRTY (30) MONTHS**.

The Court makes the following recommendation to the Bureau of Prisons:

- Incarceration at the facility in Folkston, Georgia.

The defendant is remanded to the custody of the United States Marshal.

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 United States Marshal

Pedro Fernandez-De Campa
3:19-cr-38-J-34JBT

SUPERVISED RELEASE

As a term of supervised release is not required by statute, and the defendant is a deportable alien who likely will be deported after his imprisonment, supervised release is not ordered. However, defendant shall cooperate in the collection of DNA.

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

	<u>Assessment</u>	<u>JVTA Assessment</u> ¹	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00

SCHEDULE OF PAYMENTS

The Special Assessment in the amount of **\$100.00** is due in full and immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

¹ Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.