

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

No. 16-11408
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 6, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE CONEJO-RODRIGUEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:16-CR-73-1

Before JONES, WIENER, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jose Conejo-Rodriguez pleaded guilty to being found unlawfully present in the United States and was sentenced to a term of imprisonment of 20 months to be followed by a three-year term of supervised release. On appeal, he argues that his indictment did not allege that he had a prior conviction and, therefore, he should have been sentenced under 8 U.S.C. § 1326(a). He contends that the district court exceeded the statutory maximum penalty by

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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imposing a three-year term of supervised release under § 1326(b)(1) and, thus, violated his due process rights.

The Government has filed an unopposed motion for summary affirmance, because Conejo-Rodriguez's argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). As Conejo-Rodriguez concedes that his argument is foreclosed and is raised only to preserve it for further review, a summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government's motion for summary affirmance is GRANTED. The judgment is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED.