

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

United States Court of Appeals
Fifth Circuit

FILED

February 14, 2020

Lyle W. Cayce
Clerk

No. 19-20378
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN DE DIOS TREVINO-VILLARREAL,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:18-CR-565-1

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:*

Juan De Dios Trevino-Villarreal appeals his conviction for illegal reentry into the United States. He challenges the district court's denial of his motion to dismiss the indictment, arguing that his indictment was invalid because the prior order of removal was void, as the notice to appear did not specify a time and date for his removal hearing. He concedes that his argument is foreclosed by *United States v. Pedroza-Rocha*, 933 F.3d 490 (5th Cir. 2019), *petition for*

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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cert. filed (U.S. Nov. 6, 2019) (No. 19-6588), but he wishes to preserve it for further review.

The Government has filed an unopposed motion for summary affirmance, agreeing that the issue is foreclosed under *Pedroza-Rocha*. Summary affirmance is appropriate if “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Alternatively, the Government requests an extension of time to file its brief.

In *Pedroza-Rocha*, 933 F.3d at 496-98, we held that the notice to appear was not deficient merely because it did not specify a date for the hearing, any such purported deficiency had not deprived the immigration court of jurisdiction, and the appellant could not collaterally attack his notice to appear without first exhausting his administrative remedies. Trevino-Villarreal’s arguments are, as he concedes, foreclosed by this case. *See id.*

Accordingly, the Government’s motion for summary affirmance is GRANTED, the Government’s alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.