

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

United States Court of Appeals  
Fifth Circuit

**FILED**

January 30, 2020

Lyle W. Cayce  
Clerk

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No. 19-20507  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PEDRO PALACIOS GUEVARA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:19-CR-47-1

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Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:\*

Pedro Palacios Guevara appeals his conviction of illegal reentry into the United States after deportation subsequent to a felony conviction. He entered a conditional guilty plea to the indictment, reserving the right to challenge the district court's denial of his motion to dismiss the indictment. The district court sentenced him to 48 months of imprisonment.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

## No. 19-20507

Now, Guevara asserts, as he did in the district court, that his prior removal was invalid because the notice to appear which commenced the proceeding was defective for failing to specify a date and time for his removal hearing. He contends therefore that the removal order is void and that the Government cannot establish an essential element of the illegal reentry offense under 8 U.S.C. § 1326. He concedes that this challenge is foreclosed by *United States v. Pedroza-Rocha*, 933 F.3d 490 (5th Cir. 2019), *petition for cert. filed* (U.S. Nov. 6, 2019) (No. 19-6588), but he wishes to preserve the issue for further review.

The Government has filed an unopposed motion for summary affirmance, agreeing that the issue is foreclosed under *Pedroza-Rocha*. Alternately, the Government requests an extension of time to file its brief.

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). *Pedroza-Rocha* concluded that the notice to appear was not deficient for failing to specify a date and time for the hearing, that any such alleged deficiency had not deprived the immigration court of jurisdiction, and that *Pedroza-Rocha* could not collaterally attack his notice to appear without first exhausting his administrative remedies. 933 F.3d at 496–98. Guevara’s arguments are, as he concedes, foreclosed by this case. *See id*; *see also Pierre-Paul v. Barr*, 930 F.3d 684, 688-90 (5th Cir. 2019). 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.