

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

United States Court of Appeals
Fifth Circuit

FILED

February 5, 2020

Lyle W. Cayce
Clerk

No. 19-20525
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EDUARDO HERNANDEZ CASTELLANOS,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:18-CR-592-1

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:*

Eduardo Hernandez Castellanos appeals his conviction for illegal reentry into the United States. He entered a conditional guilty plea, reserving the right to challenge the district court's denial of his motion to dismiss the indictment. The district court sentenced him to 12 months and one day of imprisonment and two years of supervised release. Although Hernandez Castellanos is not presently incarcerated for the instant conviction, his appeal

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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of his conviction is not moot. *See Spencer v. Kemna*, 523 U.S. 1, 7-8 (1998); *United States v. Lares-Meraz*, 452 F.3d 352, 355 (5th Cir. 2006).

Hernandez Castellanos argues, as he did in the district court, that his prior removal was invalid because it followed a defective notice to appear that failed to specify a date and hearing time. He further contends that he may collaterally attack the removal proceeding without exhausting his administrative remedies. He concedes that his arguments are 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), and he explains that he has raised the arguments to preserve them for further review. The Government has filed an unopposed motion for summary affirmance, agreeing that the issues are foreclosed under *Pedroza-Rocha*. The Government, alternatively, 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). Hernandez Castellanos’s arguments are indeed foreclosed. *See Pedroza-Rocha*, 933 F.3d at 496-98; *see also Pierre-Paul v. Barr*, 930 F.3d 684, 688-93 (5th Cir. 2019), *petition for cert. filed* (U.S. Dec. 16, 2019) (No. 19-779).

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.