

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

United States Court of Appeals  
Fifth Circuit

**FILED**

June 29, 2020

Lyle W. Cayce  
Clerk

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No. 19-20822  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN GABRIEL ORTUNO-OLEA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:19-CR-168-1

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Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Juan Gabriel Ortuno-Olea appeals his conviction for illegal reentry, in violation of 8 U.S.C. § 1326. He entered a conditional guilty plea, reserving the right to appeal the denial of his motion to dismiss the indictment. Ortuno-Olea asserts that the indictment was invalid because the removal order was void due to a defective notice to appear that failed to specify the date and time for his removal hearing. He concedes that the issue is foreclosed by *United*

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 19-20822

*States v. Pedroza-Rocha*, 933 F.3d 490 (5th Cir. 2019), *cert. denied*, 2020 WL 2515686 (2020) and *Pierre-Paul v. Barr*, 930 F.3d 684 (5th Cir. 2019), *cert. denied*, 2020 WL 1978950 (U.S. Apr. 27, 2020) (No. 19-779), but he wishes to preserve it for further review. The Government has filed a motion for summary affirmance, agreeing that the issue is foreclosed under *Pedroza-Rocha* and *Pierre-Paul*. Alternatively, the Government requests an extension of time to file a brief.

In *Pedroza-Rocha*, we concluded that the notice to appear was not rendered deficient because it did not specify a date or time for the removal hearing, that any such alleged deficiency had not deprived the immigration court of jurisdiction, and that the defendant could not collaterally attack his underlying removal order without first exhausting his administrative remedies. *Pedroza-Rocha*, 933 F.3d at 496-98. Because the Government's position "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), 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 is **AFFIRMED**.