

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

United States Court of Appeals
Fifth Circuit

FILED

March 13, 2020

Lyle W. Cayce
Clerk

No. 19-50806
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ARMANDO FRAIRE-CASTANEDA, also known as Armando Fraire, also known as Armondo Fraire, also known as Armando Castaneda,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:18-CR-151-1

Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

PER CURIAM:*

Armando Fraire-Castaneda appeals his conviction for illegal reentry following removal, in violation of 8 U.S.C. § 1326. Fraire-Castaneda challenges the district court's denial of his motion to dismiss the indictment. Specifically, he contends that the initial notice to appear in his removal proceedings was defective, his removal was thus invalid, and it could not be used to support his

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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illegal reentry conviction. Additionally, Fraire-Castaneda asserts that he is excused from satisfying the § 1326(d) requirements for collaterally attacking his removal order.

The Government has filed a motion for summary affirmance, arguing that the issues are foreclosed by circuit precedent. Alternatively, the Government requests an extension of time to file its brief. Fraire-Castaneda opposes the Government's motion asserting that his arguments are not foreclosed.

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). Contrary to Fraire-Castaneda's assertions, the arguments he raises on appeal 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 *Pierre-Paul v. Barr*, 930 F.3d 684 (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, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time to file its appellate brief is DENIED.