

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

United States Court of Appeals
Fifth Circuit

FILED

June 25, 2020

Lyle W. Cayce
Clerk

No. 20-50004
Summary Calendar

Consolidated with 20-50015

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BENITO MORENO-RODRIGUEZ,

Defendant-Appellant

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:19-CR-291-1
USDC No. 4:19-CR-327-1

Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Benito Moreno-Rodriguez entered a conditional guilty plea to illegal reentry into the United States, reserving the right to challenge the district court's denial of his motion to dismiss the indictment. He now appeals the denial of his motion to dismiss the indictment. He also appeals a separate

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 20-50004
c/w No. 20-50015

revocation judgment but raises no challenge to the revocation of his supervised release.

As to his illegal reentry conviction, Moreno-Rodriguez argues 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), *cert. denied*, 2020 WL 2515686 (U.S. May 18, 2020) (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). Moreno-Rodriguez’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), *cert. denied*, 2020 WL 1978950 (U.S. Apr. 27, 2020) (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 judgments of the district court are **AFFIRMED**.