

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

United States Court of Appeals
Fifth Circuit

FILED

May 18, 2020

Lyle W. Cayce
Clerk

No. 19-20582
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FRANCISCO LOPEZ-BARRON, also known as Irenio Castro Barron,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CR-249-1

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Following a bench trial with stipulated facts, Francisco Lopez-Barron was convicted for illegal reentry into the United States after removal, a violation of 8 U.S.C. § 1326. He appeals, challenging the district court's denial of his motion to dismiss the indictment. Relying on *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), Lopez-Barron contends that the initial notice to appear in his removal proceedings was defective, his removal was thus invalid, and it could

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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not be used to support his illegal reentry conviction. Additionally, Lopez-Barron asserts that he is excused from satisfying or has satisfied the § 1326(d) requirements for collaterally attacking his removal order. 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 *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 raises them to preserve for further possible review. The Government has filed an unopposed motion for summary affirmance, agreeing that the issues are foreclosed by *Pedroza-Rocha* and *Pierre-Paul*. Alternatively, the Government requests an extension of time to file a 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). The arguments raised on appeal are foreclosed. *See Pedroza-Rocha*, 933 F.3d at 496-98; *Pierre-Paul*, 930 F.3d at 689-93.

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.