

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

United States Court of Appeals  
Fifth Circuit

**FILED**

February 19, 2020

Lyle W. Cayce  
Clerk

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No. 19-50285  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JORGE LUIS ARMENDARIZ-TORRES,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:18-CR-641-1

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Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

PER CURIAM:\*

Jorge Luis Armendariz-Torres appeals his conviction for entry into the United States after deportation in violation of 8 U.S.C. § 1326. He entered a conditional guilty plea, reserving the right to challenge the district court's denial of his motion to dismiss the indictment. Armendariz-Torres argues that his prior removal could not support a conviction for illegal reentry under § 1326. Relying on *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), he argues that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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his prior removal order was invalid because the notice to appear was defective for failing to include the date and time of his removal hearing. Armendariz-Torres concedes that this challenge is 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), but he wishes to preserve the issue for further review.

The Government has filed an unopposed motion for summary affirmance, agreeing that the issue is foreclosed under *Pedroza-Rocha* and *Pierre-Paul*. Alternately, the Government 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).

In *Pedroza-Rocha*, 933 F.3d at 492-93, the district court dismissed an indictment charging the defendant with a violation of § 1326 based on the reasoning that the removal order was void because the notice to appear failed to specify a date and time for the removal hearing. We reversed, concluding that the notice to appear was not defective, that the alleged defect would not deprive an immigration court of jurisdiction, and that § 1326(d) barred the defendant from collaterally attacking his removal order because he had failed to exhaust his administrative remedies. *Id.* at 496-98. Armendariz-Torres’s arguments are foreclosed. *See id.*

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.