

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

United States Court of Appeals
Fifth Circuit

FILED

January 10, 2020

Lyle W. Cayce
Clerk

No. 19-50378
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SELVIN LEONARDO BUSTILLO-ROMERO, also known as Jose Manuel
Poncen,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:17-CR-76-1

Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:*

Selvin Leonardo Bustillo-Romero appeals his conviction for illegal reentry following removal, a violation of 8 U.S.C. § 1326. He entered a conditional guilty plea, reserving the right to appeal the district court's denial of his motion to dismiss the indictment. Bustillo-Romero argues that the indictment was invalid because the removal order was void due to a defective

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 19-50378

notice to appear that failed to specify the date and time for his removal hearing. He concedes that the issue 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), 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*. Alternately, the Government requests an extension of time to file a brief.

In *Pedroza-Rocha*, we applied *Pierre-Paul* to conclude that the notice to appear was not rendered deficient because it did not specify a date or time for the hearing, that any such alleged deficiency had not deprived the immigration court of jurisdiction, and that Pedroza-Rocha could not collaterally attack his notice to appear without first exhausting his administrative remedies. *Pedroza-Rocha*, 933 F.3d at 496-98. Bustillo-Romero's arguments are, as he concedes, foreclosed. *See id.* 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 of the district court is AFFIRMED.