

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

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No. 19-50474  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 31, 2020

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE ROBERTO YEPEZ-VALENCIA, also known as Jose Roberto Yepez,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:18-CR-3615-1

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Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Jose Roberto Yepez-Valencia appeals his conviction for illegal reentry, in violation of 8 U.S.C. § 1326. He stipulated at a bench trial that he illegally reentered this country, reserving the right to appeal the denial of his motion to dismiss the indictment. Yepez-Valencia asserts that the indictment was invalid because the removal order was void due to a defective notice to appear that failed to specify the date and time for his removal hearing. He concedes

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 19-50474

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), *petition for cert. filed* (U.S. Dec. 16, 2019) (No. 19-779), 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*. Alternatively, the Government requests an extension of time to file a brief.

In *Pedroza-Rocha*, we concluded that the notice to appear was not rendered deficient because it did not specify a date or time for the removal hearing, that any such alleged deficiency had not deprived the immigration court of jurisdiction, and that Pedroza-Rocha could not collaterally attack his underlying removal order without first exhausting his administrative remedies. 933 F.3d at 496-98. 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 is AFFIRMED.