

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

United States Court of Appeals
Fifth Circuit

FILED

December 3, 2019

Lyle W. Cayce
Clerk

No. 19-50566
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant

v.

JOSE MANUEL FELIX-FELIX,

Defendant-Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:19-CR-1200-1

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Jose Manuel Felix-Felix was indicted on one charge of illegal reentry following removal, in violation of 8 U.S.C. § 1326. The district court granted his motion to dismiss the indictment after concluding that his removal order was invalid because his notice to appear did not include a specific time and date for his removal hearing. The Government appeals and moves for summary disposition, arguing that the district court's dismissal of the

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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indictment was erroneous under *United States v. Pedroza-Rocha*, 933 F.3d 490 (5th Cir. 2019). Alternately, the Government moves for an extension of time in which to file a brief.

Summary disposition 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). *Pedroza-Rocha* concluded that the notice to appear was not deficient because it did not specify a date 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. 933 F.3d at 496-98. These conclusions are contrary to those of the district court in this case and show that the district court erred by granting Felix-Felix’s motion to dismiss. *See id.* Accordingly, the Government’s motion for summary disposition is GRANTED, the Government’s alternative motion for an extension of time to file a brief is DENIED AS MOOT, the judgment of the district court is REVERSED, and this case is REMANDED to the district court for further proceedings.