

United States Court of Appeals
for the Fifth Circuit

No. 20-50287
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 17, 2020
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ALFREDO ARROYO-HERNANDEZ, *also known as* ALFREDO
HERNANDEZ-ARROYO, *also known as* ARROYO HERNANDEZ, *also*
known as ALFREDO ARROYO HERNANDEZ, *also known as* ALFREDO
HERNANDEZ, *also known as* ALFREDO ARROYO, *also known as*
ALFREDO HERNANDEZ ARROYO,

Defendant—Appellant,

CONSOLIDATED WITH

No. 20-50288

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ALFREDO ARROYO-HERNANDEZ,

Defendant—Appellant.

No. 20-50287
c/w No. 20-50288

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:19-CR-574-1
USDC No. 4:16-CR-94-3

Before HAYNES, WILLETT, and HO, *Circuit Judges*.

PER CURIAM:*

Alfredo Arroyo-Hernandez appeals his guilty plea conviction under 8 U.S.C. § 1326. He also appeals a separate revocation judgment but raises no challenge to the revocation of his supervised release. He contends, citing *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), that his prior removal does not satisfy the removal element of § 1326 because the notice to appear did not provide the date or time of the removal hearing. In *United States v. Pedroza-Rocha*, 933 F.3d 490, 497-98 (5th Cir. 2019), *cert. denied*, 206 L. Ed. 2d 940 (2020), we relied on *Pierre-Paul v. Barr*, 930 F.3d 684, 688-89 (5th Cir. 2019), *cert. denied*, 206 L. Ed. 2d 854 (2020), to conclude that (1) a notice to appear that lacked the date and time of the removal hearing was not defective, (2) any defect was cured by the subsequent service of a notice of hearing, and (3) the purported defect was not jurisdictional. Additionally, we held that the defendant could not collaterally attack the notice to appear without first exhausting administrative remedies. *Pedroza-Rocha*, 933 F.3d at 498. Conceding that *Pedroza-Rocha* and *Pierre-Paul* foreclose his claim, Arroyo-Hernandez raises it to preserve it for further review.

The Government has filed an unopposed motion for summary affirmance, which is proper if “the position of one of the parties is clearly

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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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). Because Arroyo-Hernandez correctly concedes that his claim is foreclosed by *Pierre-Paul* and *Pedroza-Rocha*, the motion for summary affirmance is GRANTED and the Government’s alternative motion for an extension of time to file a brief is DENIED as moot. The judgments of the district court are AFFIRMED.