

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

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United States Court of Appeals  
Fifth Circuit

**FILED**

April 8, 2020

Lyle W. Cayce  
Clerk

No. 19-40666  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

AARON JOSUE ACUNA-DUENAS, also known as Jesus Estrada-Garcia, also known as Joel Cruz-Diaz,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:18-CR-1229-1

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Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Aaron Josue Acuna-Duena was convicted of illegal reentry after removal, in violation of 8 U.S.C. § 1326, and was sentenced to 32 months of imprisonment. He challenges the district court's denial of his motion to dismiss the indictment; he reserved the right to appeal this ruling by entering a conditional guilty plea. *See* FED. R. CRIM. P. 11(a)(2). Relying on *Pereira v.*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

*Sessions*, 138 S. Ct. 2105 (2018), Acuna-Duenas contends that the prior removal order that was used to support his illegal reentry conviction was void because the notice to appear failed to specify a hearing date or time. He acknowledges that the issue is foreclosed under this court’s decisions in *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 states that 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*. In the alternative, the Government requests an extension of time to file a 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). The parties are correct that Acuna-Duenas’s arguments are foreclosed. *See Pedroza-Rocha*, 933 F.3d at 492-98. 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.