

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

United States Court of Appeals
Fifth Circuit

FILED

January 3, 2020

Lyle W. Cayce
Clerk

No. 19-50374
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE ALFONSO GARCIA-SUAREZ, also known as Jose Alonso Garcia-Suarez, also known as Jose Garcia, also known as Jose Alfonso Garcia

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:18-CR-378-1

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:*

Jose Alfonso Garcia-Suarez appeals his guilty plea conviction for illegal reentry into the United States. *See* 8 U.S.C. § 1326. Garcia-Suarez entered a conditional guilty plea, reserving the right to challenge the district court's denial of his motion to dismiss his indictment. He was sentenced to 18 months of imprisonment and three years of supervised release. Although Garcia-

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 19-50374

Suarez was recently released from prison and removed to Mexico, his appeal of his conviction is not moot. *See Spencer v. Kemna*, 523 U.S. 1, 7-10 (1998); *United States v. Lares-Meraz*, 452 F.3d 352, 355 (5th Cir. 2006).

On appeal, Garcia-Suarez reiterates his district court argument that his prior removal was invalid because the notice to appear that initiated his removal proceeding was defective for failing to specify a place, date, and time for his hearing. He reiterates also his district court arguments that his removal was fundamentally unfair, the removal order was void, and the Government failed to establish an essential element of the illegal reentry offense under § 1326. He concedes that his challenge is foreclosed by precedent. *See United States v. Pedroza-Rocha*, 933 F.3d 490 (5th Cir. 2019), *petition for cert. filed* (U.S. Nov. 6, 2019) (No. 19-6588); *Pierre-Paul v. Barr*, 930 F.3d 684, 689-93 (5th Cir. 2019). He raises his challenge in order to preserve the issue for further review.

The Government has filed an unopposed motion for summary affirmance, agreeing that the issue is foreclosed by *Pedroza-Rocha*. Alternately, the Government requests an extension of time to file its brief.

We conclude that, as the parties represent, Garcia-Suarez's challenge is foreclosed. *See Pedroza-Rocha*, 933 F.3d at 496-98; *Pierre-Paul*, 930 F.3d at 689-93. Accordingly, the motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).