

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

No. 19-50938
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 1, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GREGORIO VASQUEZ-JIMENEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:19-CR-528-1

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Gregorio Vasquez-Jimenez appeals the denial of his motion to dismiss his indictment for illegal entry following deportation, upon conviction for which he was sentenced to ten months of imprisonment followed by three years of supervised release. *See* 8 U.S.C. § 1326(a), (b)(1). Citing *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), Vasquez-Jimenez contends that the prior removal order upon which his indictment was based was void for lack of subject matter

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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jurisdiction due to the failure of the notice to appear that commenced his removal proceedings to list the date and time of his removal hearing. He concedes that this 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), *cert. denied*, 2020 WL 1978950 (U.S. Apr. 27, 2020) (No. 19-779), but he seeks to preserve the issue for future review. Agreeing that Vasquez-Jimenez's appeal is foreclosed, the Government moves for summary affirmance or, alternatively, for an extension of time in which to file a merits brief.

As an initial matter, we have jurisdiction over the appeal notwithstanding Vasquez-Jimenez's release from custody and possible deportation. *See Pedroza-Rocha*, 933 F.3d at 493-95; *United States v. Lares-Meraz*, 452 F.3d 352, 355 (5th Cir. 2006); *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987).

The parties are correct that Vasquez-Jimenez's appeal of the district court's ruling on the motion to dismiss is clearly foreclosed by *Pedroza-Rocha* and *Pierre-Paul*. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969); *Pedroza-Rocha*, 930 F.3d at 496-98; *Pierre-Paul*, 930 F.3d at 688-89, 690-93. Accordingly, the Government's motion for summary affirmance is GRANTED. Its alternative motion for an extension of time is DENIED. The judgment is AFFIRMED.