

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Sergio Leija-Mendoza

No. 19-50653 (5th Cir. Feb. 6, 2020) · No. 19-50653 · Decided February 6, 2020

SUMMARY

The Fifth Circuit affirmed Sergio Leija-Mendoza’s conviction for illegal reentry following the government’s unopposed motion for summary affirmance. The court held that his arguments concerning the validity of his prior removal and exhaustion of administrative remedies were foreclosed by existing circuit precedent.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Per curiam; King; Graves; Willett
JURISDICTION	Federal
DECIDED	February 6, 2020
DOCKET	19-50653
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his conviction for illegal reentry after entering a conditional guilty plea that reserved his right to challenge the denial of his motion to dismiss the indictment. The Government moved for summary affirmance.
STANDARD OF REVIEW	Summary affirmance is appropriate when one party’s position is clearly correct as a matter of law and there is no substantial question concerning the outcome.
PRECEDENTIAL VALUE	Unpublished and nonprecedential under 5th Circuit Rule 47.5, subject to limited exceptions under Rule 47.5.4.
PARTIES	Sergio Leija-Mendoza v. United States of America

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Leija-Mendoza's appeal became moot after his release from prison.
2. Whether the alleged defect in the notice to appear rendered his prior removal invalid.
3. Whether Leija-Mendoza could collaterally attack the prior removal without exhausting administrative remedies.
4. Whether the Government was entitled to summary affirmance because the issues were foreclosed by binding Fifth Circuit precedent.

HOLDINGS

1. The appeal was not moot because a criminal conviction continues to carry collateral consequences after the defendant's release from imprisonment.
2. Leija-Mendoza's arguments that his prior removal was invalid because the notice to appear omitted the hearing date and time, and that he could collaterally attack the removal without exhausting administrative remedies, were foreclosed by *United States v. Pedroza-Rocha*.
3. Summary affirmance was appropriate because the Government's position was clearly correct as a matter of law and the issues presented no substantial question as to the outcome.

KEY QUOTATIONS

“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.”” (2)

FACTUAL BACKGROUND

Leija-Mendoza was convicted of illegal reentry into the United States after a conditional guilty plea. He challenged the validity of his prior removal, arguing that the notice to appear failed to specify a date and hearing time and that he could collaterally attack the removal without exhausting administrative remedies. He was sentenced to 36 months of imprisonment and three years of supervised release and had been released from prison by the time of the appeal.

PROCEDURAL HISTORY

Leija-Mendoza was indicted for illegal reentry, moved to dismiss the indictment based on an allegedly defective notice to appear and the asserted ability to collaterally attack his prior removal without exhausting administrative remedies, and entered a conditional guilty plea after the district court denied the motion. The district court sentenced him to 36 months of imprisonment and three years of supervised release. He appealed, and the Fifth Circuit granted the Government's motion for summary affirmance and affirmed the district court's judgment.

DISPOSITION

affirmed

CASES CITED

- *Spencer v. Kemna*, 523 U.S. 1, 7-10 (1998)
- *United States v. Lares-Meraz*, 452 F.3d 352, 355 (5th Cir. 2006)
- *United States v. Pedroza-Rocha*, 933 F.3d 490, 496-98 (5th Cir. 2019)
- *Pierre-Paul v. Barr*, 930 F.3d 684, 688-90 (5th Cir. 2019)
- *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969)

OPINION

PER CURIAM.

Case: 19-50653 Document: 00515300647 Page: 1 Date Filed: 02/06/2020 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT United States Court of Appeals Fifth Circuit No. 19-50653 FILED February 6, 2020 Summary Calendar Lyle W. Cayce Clerk UNITED STATES OF AMERICA, Plaintiff-Appellee v. SERGIO LEIJA-MENDOZA, also known as Sergio Leija Mendoza, also known as Sergio Leija, also known as Sergio Mendoza-Leija, also known as Sergio Mendoza, Defendant-Appellant Appeal from the United States District Court for the Western District of Texas USDC No. 5:18-CR-823-1 Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM: * Sergio Leija-Mendoza appeals his conviction for illegal reentry into the United States. He entered a conditional guilty plea, reserving the right to challenge the district court's denial of his motion to dismiss the indictment.

The district court sentenced him to 36 months of imprisonment and three years of supervised release. Although Leija-Mendoza was recently released from * 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. Case: 19-50653 Document: 00515300647 Page: 2 Date Filed: 02/06/2020 No. 19-50653 prison, 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). Leija-Mendoza argues, as he did in the district court, that his prior removal was invalid because it followed a defective notice to appear that failed to specify a date and hearing time. He further contends that he may collaterally attack the removal proceeding without exhausting his administrative remedies.

He concedes that his arguments are 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 he explains that he has raised the arguments to preserve them for further review.

The Government has filed an unopposed motion for summary affirmance, agreeing that the issues are foreclosed under *Pedroza-Rocha*. The Government, alternatively, requests an extension of time

to file its 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). Leija-Mendoza’s arguments are indeed foreclosed. See *Pedroza-Rocha*, 933 F.3d at 496-98; see also *Pierre-Paul v. Barr*, 930 F.3d 684, 688-90 (5th Cir. 2019), petition for cert. filed (U.S. Dec. 16, 2019) (No. 19-779).

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. 2