

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

August 4, 2022

Lyle W. Cayce  
Clerk

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No. 22-50044  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JOSE RODOLFO ESCAJEDA,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:06-CR-2507-2

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Before KING, JONES, and SMITH, *Circuit Judges.*

PER CURIAM:\*

Jose Rodolfo Escajeda, federal prisoner # 69445-280, appeals the district court's denial of his motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). In response, the Government moves for the

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 22-50044

dismissal of the appeal as untimely or, alternatively, for an extension of time to file its brief.

A notice of appeal in a criminal case must be filed within 14 days of the entry of the judgment or order being appealed. FED. R. APP. P. 4(b)(1)(A)(i); *United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000) (stating that a motion for reduction of sentence under § 3582(c)(2) is a step in a criminal case). The district court may extend the time “for a period not to exceed 30 days from the expiration of the time otherwise prescribed” if the district court finds excusable neglect or good cause, FED. R. APP. P. 4(b)(4), and we will treat a late notice of appeal filed within the additional 30-day period as a motion for a determination whether the notice of appeal should be considered timely due to excusable neglect or good cause, *United States v. Golding*, 739 F.2d 183, 184 (5th Cir. 1984).

The order Escajeda seeks to appeal was entered on December 16, 2020. Escajeda filed his notice of appeal in January 2022, and soon thereafter filed a motion for leave to proceed in forma pauperis (IFP), which was granted by a magistrate judge on February 4, 2022.

While not jurisdictional, the time limits for filing a notice of appeal in a criminal case are “mandatory claims-processing rules.” *United States v. Pesina-Rodriguez*, 825 F.3d 787, 788 (5th Cir. 2016). Where, as in this case, the untimeliness of a notice of appeal is properly invoked, the appeal is foreclosed. *See id.*

Accordingly, the Government’s motion to dismiss the appeal as untimely is GRANTED, the Government’s alternative motion for an extension of the briefing period is DENIED, and this appeal is DISMISSED.

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## J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the appeal is DISMISSED.



Certified as a true copy and issued  
as the mandate on Aug 26, 2022

Attest:

*Lyle W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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NEW ORLEANS, LA 70130

August 26, 2022

Mr. Philip Devlin  
Western District of Texas, El Paso  
United States District Court  
525 Magoffin Avenue  
Room 108  
El Paso, TX 79901-0000

No. 22-50044 USA v. Escajeda  
USDC No. 3:06-CR-2507-2

Dear Mr. Devlin,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

*Charles Whitney*

By: \_\_\_\_\_  
Charles B. Whitney, Deputy Clerk  
504-310-7679

cc:  
Mr. Jose Rodolfo Escajeda  
Mr. Joseph H. Gay Jr.  
Ms. Angela Sandoval Raba