

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 4, 2022

Lyle W. Cayce
Clerk

No. 21-50104
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CLETO SAMUEL DURAN,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:03-CR-144-3

Before SOUTHWICK, GRAVES, and COSTA, *Circuit Judges.*

PER CURIAM:*

Cleto Samuel Duran, federal prisoner # 28996-180, has appealed the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). The Government moves to dismiss the appeal as untimely or, alternatively, for a 30-day extension of time to file a brief.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Duran filed his notice of appeal after the deadline and beyond the time during which the district court could have granted him an extension. FED. R. APP. P. 4(b)(1)(A)(i), (b)(4). While the timely filing of a notice of appeal in a criminal case is not jurisdictional, it is mandatory. *United States v. Pesina-Rodriguez*, 825 F.3d 787, 788 (5th Cir. 2016). We will enforce the mandatory time limit by dismissing the appeal where, as here, the Government timely raises the issue. *See United States v. Hernandez-Gomez*, 795 F.3d 510, 511 (5th Cir. 2015).

Accordingly, the Government's motion to dismiss is GRANTED, its alternative motion for an extension of time is DENIED as unnecessary, and the appeal is DISMISSED as untimely.