

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

July 20, 2022

Lyle W. Cayce  
Clerk

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No. 21-51005  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JOSE FRANCISCO HERNANDEZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:21-CR-69-1

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Before DAVIS, SMITH, and DENNIS, *Circuit Judges.*

PER CURIAM:\*

Jose Francisco Hernandez appeals the sentence resulting from his conviction for possession of 100 kilograms or more of marijuana with intent to distribute in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(vii). For the first time on appeal, Hernandez challenges the condition of his supervised release

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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providing that if the probation officer determines he poses a risk to another person, the officer may require him to notify that person of the risk (i.e., the risk-notification condition). He argues that this condition impermissibly delegates judicial authority to the probation officer. The Government has moved without opposition for summary affirmance or, alternatively, for an extension of time to file its brief.

We recently held that the risk-notification condition of a defendant's supervised release does not impermissibly delegate the court's judicial authority to the probation officer. *United States v. Mejia-Banegas*, 32 F.4th 450, 451-52 (5th Cir. 2022). Accordingly, Hernandez's argument is foreclosed. *See id.* Because the Government's position "is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case," summary affirmance is appropriate. *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time is DENIED.