

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

September 7, 2021

Lyle W. Cayce  
Clerk

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No. 21-50168  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

GUSTAVO ADOLFO LOPEZ-REYNOSO,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:16-CR-77-1

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

PER CURIAM:\*

Gustavo Adolfo Lopez-Reynoso appeals the district court's denial of his motion for reconsideration of the denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). His notice of appeal is untimely

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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because it was filed 34 days after entry of the underlying order. *See* FED. R. APP. P. 4(b)(1)(A)(i).

The Government moves to dismiss the appeal based on the untimely notice of appeal and, alternately, moves for an extension of time to file its brief. The Rule 4(b) time limit, although not jurisdictional, is mandatory. *United States v. Hernandez-Gomez*, 795 F.3d 510, 511 (5th Cir. 2015); *see also Manrique v. United States*, 137 S. Ct. 1266, 1272 (2017).

A district court may extend the time to file a notice of appeal for 30 days based on a finding of excusable neglect or good cause. FED. R. APP. P. 4(b)(4). Lopez-Reynoso's notice of appeal, filed within this 30-day period, is construed as a motion for an extension of time based on excusable neglect. *See United States v. Golding*, 739 F.2d 183, 184 (5th Cir. 1984).

Accordingly, this case is REMANDED to the district court for the limited purpose of determining whether there is excusable neglect or good cause to warrant an extension of time. Upon making this finding, the district court shall promptly return the case to this court for further proceedings. The Government's motion to dismiss or, alternately, for an extension of time to file its brief, is CARRIED WITH THE CASE.