

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 25, 2026

Lyle W. Cayce
Clerk

No. 25-20347
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ERICA MACK,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CR-397-7

Before JONES, GRAVES, and WILSON, *Circuit Judges*.

PER CURIAM:*

Erica Mack pleaded guilty to one count of conspiracy to possess with intent to distribute and to distribute a mixture and substance containing a detectable amount of methamphetamine and fentanyl and received a below-guidelines sentence of 108 months of imprisonment. Mack timely appealed her sentence, challenging the district court's denial of her request for a mitigating role adjustment pursuant to U.S.S.G. § 3B1.2 and arguing that she

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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was entitled to additional offense level reductions pursuant to U.S.S.G. § 2D1.1(b)(17) and § 2D1.1(a)(5) because she was a minor or minimal participant in the conspiracy. In response, the Government argues that the appeal waiver contained in the plea agreement bars Mack's appeal.

We review whether an appeal waiver bars an appeal de novo. *United States v. Keele*, 755 F.3d 752, 754 (5th Cir. 2014). To determine whether an appeal waiver bars an appeal, we conduct a two-step inquiry, first examining "whether the waiver was knowing and voluntary," and then considering "whether the waiver applies to the circumstances at hand, based on the plain language of the agreement." *United States v. Kelly*, 915 F.3d 344, 348 (5th Cir. 2019) (internal quotation marks and citation omitted). The record confirms that both conditions are met here. *See United States v. Portillo*, 18 F.3d 290, 292-93 (5th Cir. 1994); *see also United States v. McKinney*, 406 F.3d 744, 746 (5th Cir. 2005).

Mack does not challenge, or even address, the validity of the appeal waiver in her opening brief, and she has not filed a reply brief to respond to the Government's waiver argument. Counsel for Mack is WARNED that pursuing an appeal contrary to a valid appeal waiver and without responding to the Government's invocation of the waiver is a needless waste of judicial resources that could result in sanctions. *See United States v. Gaitan*, 171 F.3d 222, 223-24 (5th Cir. 1999).

Accordingly, the appeal is DISMISSED.