

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 14, 2026

Lyle W. Cayce
Clerk

No. 25-40535
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JORGE ARTURO GONZALEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:19-CR-1980-2

Before CLEMENT, HAYNES, and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Jorge Arturo Gonzalez pleaded guilty to conspiracy to possess with intent to distribute 500 or more grams of cocaine. 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(B). He is currently serving a 235-month term of imprisonment for that conviction. In this appeal, Gonzalez challenges the district court's order denying his motion to compel the production of grand

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

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jury materials pursuant to Federal Rule of Criminal Procedure 6(e) and his motion for a sentence reduction under 18 U.S.C. § 3582(c)(2).

Gonzalez's motion to compel and motion for a sentence reduction were steps in his criminal case, not civil postconviction actions. *See United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000) (per curiam). That means the deadline for Gonzalez to file his notice of appeal was fourteen days from the entry of the district court's July 29, 2025, order denying his motions. *See* FED. R. APP. P. 4(b)(1)(A)(i). So, his notice of appeal, filed no earlier than August 25, 2025, was not timely.¹ If a defendant's tardiness is the result of "excusable neglect or good cause," the district court may grant the defendant an additional thirty days to appeal, sua sponte or on a motion by the defendant. *Id.* R. 4(b)(4). Gonzalez made no such motion, and the district court granted no such extension.

The time limits prescribed by Rule 4(b)(1)(A) are not jurisdictional, but they are "mandatory claims-processing rules" when the government raises them, as it does here. *United States v. Pesina-Rodriguez*, 825 F.3d 787, 788 (5th Cir. 2016) (per curiam). Still, we customarily regard an untimely notice of appeal in a criminal case as an implied motion for extension of time, which requires a determination of whether excusable neglect or good cause justifies extending time for the defendant to appeal. *Alvarez*, 210 F.3d at 310 (citing *United States v. Golding*, 739 F.2d 183, 184 (5th Cir. 1984)); *see* FED. R. APP. P. 4(b)(4). And we will remand in appropriate circumstances for the district court to make this determination in the first instance. *See United States v. Adams*, 106 F.3d 646, 647–48 (5th Cir. 1997); *United States v. Calton*, 900 F.3d 706, 709 (5th Cir. 2018); *United States v. Hurtado-Hilario*, No. 02-41516, 2003 WL 21145755, at *1 (5th Cir. May 1, 2003) (per curiam). *But see*

¹ Gonzalez alleges that he did not receive the district court's order denying his motions until August 20, 2025—i.e., twenty-two days after the order was entered.

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United States v. Hernandez-Gomez, 795 F.3d 510, 511 (5th Cir. 2015) (per curiam) (dismissing untimely appeal without further analysis); *United States v. Escajeda*, No. 22-50044, 2022 WL 3098687, at *1 (5th Cir. Aug. 4, 2022) (same).

Here, a remand would be futile because Gonzalez’s appeal fails on the merits. *See Alvarez*, 210 F.3d at 310.

In his motion to compel production of grand jury materials, Gonzalez claimed to possess “some indirect evidence” of prosecutorial misconduct and insisted that the government could remove all doubt by handing over those materials. Gonzalez did not provide this evidence, and he has not demonstrated a particularized need for the grand jury materials, either in his motion or in his appellate brief. *See United States v. Miramontez*, 995 F.2d 56, 59 (5th Cir. 1993) (explaining that a defendant requesting grand jury materials must establish that “(1) the material he seeks is needed to avoid a possible injustice in another judicial proceeding, (2) the need for disclosure is greater than the need for continued secrecy, and (3) his request is structured to cover only material so needed”). The district court did not abuse its discretion in rejecting Gonzalez’s attempt to “conduct a fishing expedition into grand jury materials.” *United States v. Schreiber*, No. 00-50573, 2001 WL 502772, at *1 (5th Cir. Apr. 26, 2001) (per curiam).

As for Gonzalez’s motion to reduce his sentence, the district court concluded that Gonzalez was not entitled to a two-level adjustment under U.S.S.G. § 4C1.1 because he is not a zero-point offender. Gonzalez does not explain why that conclusion is incorrect, so this challenge is forfeited. *See Mapes v. Bishop*, 541 F.3d 582, 584 (5th Cir. 2008) (per curiam) (“Although pro se briefs are afforded liberal construction, . . . even pro se litigants must brief arguments in order to preserve them.”).

We AFFIRM.