

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 27, 2026

Lyle W. Cayce
Clerk

No. 25-40699
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TEMIRKHAN ABILGAZIYEV,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:25-PO-2219-1

Before STEWART, RICHMAN, and HIGGINSON, *Circuit Judges*.

PER CURIAM:*

Following a bench trial before a magistrate judge, Temirkhan Abilgaziyeu was convicted of unlawfully entering the United States and was sentenced to time served. Within 14 days of entry of judgment, Abilgaziyeu filed a motion for new trial, as well as a notice of appeal directed to this court.

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

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The attorney appointed to represent Abilgazyev has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Abilgazyev has not filed a response. Before turning to the merits of the appeal, we must examine the basis of our jurisdiction. *See Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987).

Here, there are two impediments to our exercise of jurisdiction over the appeal. As an initial matter, the motion for new trial remains pending before the magistrate judge, and Abilgazyev's notice of appeal is thus ineffective to appeal the judgment of conviction and sentence until there is a ruling on the pending new trial motion. *See United States v. Greenwood*, 974 F.2d 1449, 1466 (5th Cir. 1992). While typically we would order a remand for the limited purpose of ruling on that motion, such action is inappropriate here because Abilgazyev did not appeal the magistrate judge's judgment to the district court and, as such, we lack appellate jurisdiction. *See United States v. Renfro*, 620 F.2d 497, 500 (5th Cir. 1980).

Accordingly, the appeal is DISMISSED, and counsel's motion for leave to withdraw is DENIED as moot.