

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 26, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CANDELARIA VALLEJO-GALLO,

Defendant - Appellant.

No. 25-1447
(D.C. No. 1:20-CR-00028-RM-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ**, **TYMKOVICH**, and **McHUGH**, Circuit Judges.

Candelaria Vallejo-Gallo, proceeding pro se, appeals from the district court's denial of her motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). Because Ms. Vallejo-Gallo failed to file a timely notice of appeal, however, we grant the government's motion to dismiss the appeal.

The district court entered its order denying the § 3582(c)(1)(A) motion on October 24, 2025. Ms. Vallejo-Gallo had 14 days—until November 7, 2025—to file

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

a notice of appeal. *See* Fed. R. App. P. 4(b)(1)(A); *United States v. Randall*, 666 F.3d 1238, 1240-41 (10th Cir. 2011) (Rule 4(b) governs timeliness of appeal in § 3582 matters).

The notice of appeal was dated November 5, 2025. As an incarcerated person proceeding pro se, Ms. Vallejo-Gallo is entitled to invoke the mailbox rule, which deems a pro se prisoner's notice of appeal to be "timely if given to prison officials for mailing prior to the filing deadline, regardless of when the court itself received the documents," *Price v. Philpot*, 420 F.3d 1158, 1164 (10th Cir. 2005). But the mailbox rule has certain requirements. "If an institution has a system designed for legal mail," a prisoner "must use that system to receive the benefit" of the rule. Fed. R. App. P. 4(c)(1). And a notice of appeal must be accompanied by "a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid" or "evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid." Fed. R. App. P. 4(c)(1)(A)(i), (ii).

The certificate of service for Ms. Vallejo-Gallo's notice of appeal stated that she placed the notice of appeal in "institutional mail" on November 5, 2025. R., vol. 1 at 306. It was not notarized, however, nor did it contain a declaration that complied with § 1746. Further, it did not state that postage was prepaid. The certificate of service therefore did not comply with the mailbox rule. *See Price*, 420 F.3d at 1167 (litigant failed to include "'penalty of perjury' language as specifically required by . . . § 1746"); *United States v. Ceballos-Martinez*, 387 F.3d

1140, 1145 (10th Cir. 2004) (litigant’s “notice of appeal has neither a declaration of compliance nor a notarized statement, and it fails to affirm that he pre-paid first-class postage for any of his filings”); *United States v. Smith*, 182 F.3d 733, 734 n.1 (10th Cir. 1999) (declaration “did not, as required, state that first-class postage has been prepaid” (internal quotation marks omitted)). Moreover, the record on appeal contains no other evidence of timely deposit in the mail with postage prepaid. For example, the envelope for the notice of appeal displays metered postage dated November 19, 2025.

Under Rule 4(c)(1)(B), we may “exercise[] [our] discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).” In her response to the government’s motion to dismiss, Ms. Vallejo-Gallo again states that she placed her notice of appeal in institutional mail on November 5, 2025. But she says nothing about prepaying postage for the notice of appeal. And in any event, only the certificate of service for the response was made under penalty of perjury. The response therefore does not support applying Rule 4(c)(1)(B).

Accordingly, the notice of appeal was filed when the district court received it on November 24, 2025. *See Price*, 420 F.3d at 1167. It was untimely.

In a criminal case, a timely notice of appeal is not a jurisdictional requirement. *See Randall*, 666 F.3d at 1241. Ms. Vallejo-Gallo thus suggests that “it must be applied with flexibility where justice so requires.” Resp. to Mot. to Dismiss at 3. But even though it is not jurisdictional, “the time bar in Rule 4(b) must be enforced by this court when properly invoked by the government.” *Randall*, 666 F.3d at 1241

(internal quotation marks omitted). Here, the government has properly invoked the rule. We therefore grant the government's motion to dismiss and dismiss the appeal as untimely.

Entered for the Court

Harris L Hartz
Circuit Judge