NO. _____

In the Supreme Court of the United States

MIGUEL JESUS RODRIGUEZ-VILLANUEVA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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August 17, 2022

QUESTION PRESENTED

Whether the Fifth Circuit Court of Appeals had appellate jurisdiction to review the district court's discretionary decision not to depart below the advisory U.S. Sentencing Guidelines range.

DIRECTLY RELATED PROCEEDINGS

United States v. Rodriguez-Villanueva, No. 3:20-CR-555 (N.D. Tex. Oct. 4, 2021)

United States v. Rodriguez-Villanueva, No. 21-11035 (5th Cir. May 19, 2022)

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Miguel Jesus Rodriguez-Villanueva respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion below was not selected for publication. It is reprinted in the Appendix. The sentencing court did not issue any written opinions.

JURISDICTION

The Fifth Circuit entered its judgment on May 9, 2022. This petition is timely under S. Ct. R. 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1291 of Title 28 provides, in pertinent part:

> The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

Section 3742(a) of Title 18 provides:

> (a) Appeal by a Defendant.—A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—
>
> (1) was imposed in violation of law;
>
> (2) was imposed as a result of an incorrect application of the sentencing guidelines; or
>
> (3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) [1] than the maximum established in the guideline range; or
>
> (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

The Policy Statement found in United States Sentencing Guidelines § 5H1.6 provides, in pertinent part:

§5H1.6 FAMILY TIES AND RESPONSIBILITIES (POLICY STATEMENT)

> In sentencing a defendant convicted of an offense other than an offense described in the following paragraph, family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted.
>
> In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, family ties and responsibilities and community ties are not relevant in determining whether a sentence should be below the applicable guideline range.
>
> Family responsibilities that are complied with may be relevant to the determination of the amount of restitution or fine.

Commentary

Application Note:

1. Circumstances to Consider.—

(A) In General.—In determining whether a departure is warranted under this policy statement, the court shall consider the following non-exhaustive list of circumstances:

(i) The seriousness of the offense.

(ii) The involvement in the offense, if any, of members of the defendant's family.

(iii) The danger, if any, to members of the defendant's family as a result of the offense.

(B) Departures Based on Loss of Caretaking or Financial Support.—A departure under this policy statement based on the loss of caretaking or financial support of the defendant's family requires, in addition to the court's consideration of the non-exhaustive list of circumstances in subdivision (A), the presence of the following circumstances:

(i) The defendant's service of a sentence within the applicable guideline range will cause a substantial, direct, and specific loss of essential caretaking, or essential financial support, to the defendant's family.

(ii) The loss of caretaking or financial support substantially exceeds the harm ordinarily incident to incarceration for a similarly situated defendant. For example, the fact that the defendant's family might incur some degree of financial hardship or suffer to some extent from the absence of a parent through

> incarceration is not in itself sufficient as a basis for departure because such hardship or suffering is of a sort ordinarily incident to incarceration.
>
> (iii) The loss of caretaking or financial support is one for which no effective remedial or ameliorative programs reasonably are available, making the defendant's caretaking or financial support irreplaceable to the defendant's family.
>
> (iv) The departure effectively will address the loss of caretaking or financial support.

STATEMENT

Petitioner Miguel Jesus Rodriguez-Villanueva pleaded guilty to illegal reentry after removal in violation of 8 U.S.C. § 1326(a). In anticipation of sentencing, the U.S. Probation Office calculated the advisory sentencing range to be 18 to 24 months. 5th Circuit Sealed Record 129, 136

Mr. Rodriguez-Villanueva moved for a downward departure under the U.S. Sentencing Guidelines Policy Statement 5H1.6. That provision explains that family circumstances and financial hardship are not ordinarily sufficient to warrant a departure below the applicable guideline range, but offers authority to grant a downward departure where a defendant's incarceration will cause greater than normal hardship on the family. Mr. Rodriguez-Villanueva argued that his wife's recent diagnosis of stage II cancer meant she would not be able to support the family, and requested to be sentenced to time served so that he could be

deported back to Mexico and start working to support the family. 5th Circuit Sealed Record at N.D. Tex. Docket Number 32. The district court denied that motion and imposed a within-guideline-range sentence of 21 months in prison. App. 1a.

On appeal, Mr. Rodriguez-Villanueva wanted to challenge the district court's denial of the downward departure motion. Unfortunately, Fifth Circuit precedent currently holds that the court has no jurisdiction to consider that kind of challenge on appeal: "This court lacks jurisdiction to review a downward-departure denial unless . . . the district court held a mistaken belief that the Guidelines do not give it the authority to depart." *United States v. Sam*, 467 F.3d 857, 861 (5th Cir. 2006); *see also United States v. Lucas*, 516 F.3d 316, 350 (5th Cir. 2008) (citing *Sam*).

Mr. Rodriguez-Villanueva urged the Fifth Circuit to hold otherwise, but conceded that the issue was foreclosed. Rodriguez-Villanueva C.A. Br. 4–14. The Fifth Circuit dismissed the appeal for lack of jurisdiction. Pet. App. 1a (citing *Lucas* and *United States v. Alaniz*, 726 F.3d 586, 627 (5th Cir. 2013)). This timely petition follows.

REASONS FOR GRANTING THE PETITION

I. THE FIFTH CIRCUIT IS WRONG. APPELLATE COURTS HAVE JURISDICTION TO REVIEW A SENTENCING COURT'S DISCRETIONARY DENIAL OF A DOWNWARD DEPARTURE MOTION.

A. By making the Guidelines advisory, *Booker* eliminated the theoretical foundation of the no-jurisdiction rule

"In bygone days—when the federal sentencing guidelines were thought to comprise a mandatory sentencing regime—[appellate courts] routinely held that discretionary departure decisions were not reviewable unless the sentencing court misunderstood its authority or committed an error of law." *United States v. Anonymous Defendant*, 629 F.3d 68, 73 (1st Cir. 2010). As this Court recognized in 2002, "[e]very Circuit" had held that it lacked power to consider a defendant's claim "that the district court abused its discretion in refusing to depart" as long as the court understood it had the authority to do so. *United States v. Ruiz*, 536 U.S. 622, 627 (2002). This restriction was deemed "jurisdictional," and involved a narrow construction of 18 U.S.C. § 3742(a). *Id.*

But the so-called "jurisdictional" limit was not solely based on § 3742(a)'s text. It was the mandatory nature of the guidelines that insulated a district court's within-range sentence from further appellate review. When a defendant complained that the district court refused to depart below the guideline range, the "gist" of the argument was "that the district court gave him precisely the sentence required by law." *United States v. Rojas*, 868 F.2d 1409, 1410 (5th Cir. 1989);

United States v. Buenrostro, 868 F.2d 135, 139 (5th Cir. 1989) (same).

"Developments in the law have overtaken this argument." *Anonymous Defendant*, 629 F.3d at 73. In *United States v. Booker*, this Court "severed and excised" all provisions of federal law that either made the Guidelines mandatory or presumed that the Guidelines were mandatory. 543 U.S. 220, 245 (2006); *see also Pepper v. United States*, 562 U.S. 476, 495 (2011) (recognizing that 18 U.S.C. § 3742(g)(2) was invalid because "the rationale we set forth in [*Booker*] for invalidating §§ 3553(b)(1) and 3742(e) applies equally to § 3742(g)(2)").

Now that the Guidelines are advisory, a defendant is free to argue on appeal that the district court should have imposed a sentence below the advisory range. An appellate court must review that claim on direct appeal. *Gall v. United States*, 552 U.S. 38, 51 (2007).

Gall and *Booker* directly overruled the pre-*Booker* consensus described in *Ruiz*, 536 U.S. at 627. A district court's discretionary decision to impose a within-guideline-range sentence is now fair game for a defendant's sentencing appeal.

B. The "no jurisdiction" rule arises from judicial tradition rather than statute.

Congress has given the circuit courts jurisdiction to hear "appeals from all final decisions of the district courts" within their respective circuits. 28 U.S.C. § 1291. "Final judgment in a criminal case . . . means sentence. The sentence is the judgment." *Corey v. United States*, 375 U.S. 169, 174 (1963) (quoting

Berman v. United States, 302 U.S. 211, 212 (1937)). Thus, even before the Sentencing Reform Act, circuit courts had subject-matter jurisdiction to hear appeals based on challenges to a criminal sentence.

Even so, federal courts traditionally refused to consider appeals based on claims that a sentence (within statutory limits) was nonetheless too harsh. This refusal was not "jurisdictional" in the modern sense. *See Koon v. United States*, 518 U.S. 81, 96 (1996) ("Before the Guidelines system, a federal criminal sentence within statutory limits was, *for all practical purposes*, not reviewable on appeal.") (emphasis added). Instead, these cases reflected a genuine reluctance to invade the sentencing judge's prerogatives. For example, in the watershed double-jeopardy case *Blockburger v. United States*, 284 U.S. 299 (1932), this Court stated:

> Under the circumstances, so far as disclosed, it is true that the imposition of the full penalty of fine and imprisonment upon each count seems unduly severe; but there may have been other facts and circumstances before the trial court properly influencing the extent of the punishment. In any event, the matter was one for that court, with whose judgment there is no warrant for interference on our part.

Blockburger, 284 U.S. at 305; *see also Gore v. United States*, 357 U.S. 386, 393 (1958) ("First the English and then the Scottish Courts of Criminal Appeal were given power to revise sentences, the power to increase as well as the power to reduce them. This Court has no such power.") (internal citations omitted) and *Townsend v. Burke*, 334 U.S. 736, 741 (1948) ("The

sentence being within the limits set by the statute, its severity would not be grounds for relief here even on direct review of the conviction."). This was not a "jurisdictional" limitation under the modern label; it was nowhere stated in statute and did not displace the authority to hear appeals from "final decisions" in criminal cases under § 1291.

In passing the Sentencing Reform Act, Congress sought "to expand appellate review over sentencing." *United States v. Hahn*, 359 F.3d 1315, 1322 (10th Cir. 2004) (en banc). The Senate Report stated, in relevant part:

> Appellate courts have long followed the principle that sentences imposed by district courts within legal limits should not be disturbed. The sentencing provisions of the reported bill are designed to preserve the concept that the discretion of a sentencing judge has a proper place in sentencing and should not be displaced by the discretion of an appellate court. At the same time, they are intended to afford enough guidance and control of the exercise of that discretion to promote fairness and rationality, and to reduce unwarranted disparity, in sentencing.

S. Rep. No. 98-225 at 150 (1983).

In other words, § 3742 was designed to address appellate courts' traditional reluctance to revisit discretionary decisions, not to limit the statutory discretion conferred by 28 U.S.C. § 1291. Consistent with that design, circuit courts habitually assume jurisdiction over sentencing appeals through both

§ 1291 and § 3742. *Hahn*, 359 F.3d at 1320–1321. "Thus, even assuming that the government's § 3742(a)(1) analysis is correct," a Court of Appeals "ha[s] statutory subject matter jurisdiction under § 1291 over sentencing appeals." *Id.* at 1322; *see also United States v. Jacobo Castillo*, 496 F.3d 947, 951 (9th Cir. 2007) (en banc) ("Finally, Congress has conferred jurisdiction on the courts of appeals to hear 'appeals from all final decisions of the district courts of the United States.' In the absence of some other provision that would deprive us of appellate jurisdiction, we have both the constitutional power and congressional authorization to hear the instant appeal.") (citations omitted).

C. Unless a statute clearly states that a rule is jurisdictional, it is not jurisdictional.

"Only Congress may determine a lower federal court's jurisdiction." *Kontrick v. Ryan*, 540 U.S. 443, 452 (2004); *see also Kline v. Burke Constr. Co.*, 260 U.S. 226, 234 (1922) ("Only the jurisdiction of the Supreme Court is derived from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress."). Absent statutory authority, the Court of Appeals cannot shrink from or shirk its statutory jurisdiction. The lower courts have a "virtually unflagging obligation" to exercise statutory appellate jurisdiction. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

A federal court therefore errs if it imbues a court-made rule with "jurisdictional" significance. *See Snyder v. Harris*, 394 U.S. 332, 334–342 (1969)

(holding that an amendment to court rule concerning aggregation of damages could not overcome statutory amount-in-controversy requirement for diversity jurisdiction); *Sibbach v. Wilson & Co.*, 312 U.S. 1, 40 (1941) (recognizing "the inability of a court, by rule, to extend or restrict the jurisdiction conferred by a statute"). In *Kontrick*, this Court warned lower courts against using "the label 'jurisdictional'" for non-statutory rules." *Kontrick*, 540 U.S. at 455. In the interest of "[c]larity," the Court admonished, the "jurisdictional" label must apply only to those "prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority. *Id.*

This Court's truth-in-labeling campaign has been a tough slog. Old habits die hard, and the Court "has *endeavored* in recent years to '*bring some discipline*' to the use of the term 'jurisdictional.'" *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012) (emphasis added) (quoting *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011)).

This Petition presents another opportunity to correct an improper assignment of jurisdictional significance. That opportunity would independently justify certiorari jurisdiction even without the entrenched circuit split.

To assist lower courts with the process of re-labeling, this Court has propounded a "clear-statement principle," which "makes particular sense" when dealing with statutes conferring appellate jurisdiction: "A rule is jurisdictional '[i]f the Legislature clearly states that a threshold limitation

on a statute's scope shall count as jurisdictional.' But if 'Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional.'" *Gonzalez*, 565 U.S. at 141–142 (quoting *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 515–516 (2006)). Following *Gonzalez* and *Arbaugh*, then, any "jurisdictional" limit on appellate jurisdiction *must be clearly stated in a statute*. *Id.*

D. Title 18, Section 3742 contains no "clear statement" depriving the Fifth Circuit of subject-matter appellate jurisdiction.

The Sentencing Reform Act's appellate review provision, which was designed to expand appellate review, cannot provide the statutory foundation for the so-called "jurisdictional" limit at issue here. As noted previously, § 3742(a) provides that a defendant may file a notice appeal if his sentence: (1) was imposed in violation of law; (2) was imposed as a result of an incorrect application of the sentencing guidelines; (3) is greater than the sentence specified in the applicable guideline range; or (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable. *See* 18 U.S.C. § 3742(a). But if those four categories exhaust the circuit courts' sentencing jurisdiction, then how is it that those courts perform substantive reasonableness review of within-guideline-range sentences?

Under the mandatory guideline regime, a defendant had no ability to challenge the severity a sentence that fell within a properly calculated guideline range. There was no "reasonableness" or "abuse-of-discretion" review for a sentence within the

guideline range. Unless the judge departed or made an error in the calculation of the guideline range, the defendant was out-of-luck. But that all changed after *Booker*: "Regardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must" now "review the sentence under an abuse-of-discretion standard." *Gall*, 552 U.S. at 51. These points are non-controversial.

Critically, § 3742(a) remains unchanged after *Booker*. The substantive analysis has shifted mightily, but appellate jurisdiction remains the same. If § 3742(a) were truly jurisdictional (it isn't), and if it truly prohibited courts from reviewing within-guideline-range sentences (it doesn't), then *Booker* necessarily excised that provision just as it necessarily and implicitly excised § 3742(g)(2). *See Pepper*, 562 U.S. at 495.

It is no defense to say that § 3742(a) allows appeals based on unreasonableness but not based on an erroneous failure to depart. *Cf. United States v. Nokonova*, 480 F.3d 371, 375 (5th Cir. 2007) (holding that the Court would review the sentence for reasonableness, but would not review the denial of downward departure); *see also United States v. Frokjer*, 415 F.3d 865, 875 & n.3 (8th Cir. 2005) (same). Section 3742(a) draws no such distinction. Section 3742(a)(1) provides for review of a sentence imposed "in violation of law," but courts consistently held (prior to *Booker*) that this did not reach the claim that an otherwise lawful sentence was simply too long. *See Ruiz*, 536 U.S. at 627. If *Booker* is deemed to re-interpret § 3742(a)(1) to reach abuse-of-discretion claims, then refusals to depart are reviewable in the

same manner as refusals to vary. If, as Petitioner contends, the Fifth Circuit has jurisdiction under 28 U.S.C. § 1291, then it was improper to dismiss the case for lack of jurisdiction. Pet. App. 1. Put more simply, if a sentence resulting from an abuse of discretion is "imposed in violation of law," then an erroneous denial of a downward departure fits within that description just as easily as an erroneous denial of a downward variance. There is certainly no clear statement within § 3742(a)(1) that distinguishes between those two kinds of challenges. Either way, the decision below was wrong.

II. THE CIRCUITS ARE DIVIDED OVER THE QUESTION PRESENTED.

The First and Ninth Circuits recognize that post-*Booker* appellate review of federal sentences includes the power to review discretionary denials of downward departure. *See United States v. Battle*, 637 F.3d 44, 51–52 & n.6 (1st Cir. 2011) (discussing *Anonymous Defendant*); *see also United States v. Plouffe*, 445 F.3d 1126, 1130 (9th Cir. 2006) (The jurisdictional limitation "made sense when the Guidelines were considered mandatory," but "it would not make sense to so restrict jurisdiction on appeal now that the Guidelines must be viewed, per the Supreme Court's *Booker* holding, as merely advisory, with sentencing courts exercising discretion within and beyond Guidelines ranges, guided by the statutory purposes of sentencing.").

The Fifth Circuit has, of course, retained its "jurisdictional" rule that denials of downward departures are off-limits, even after *Booker*. App. 1a (citing *Lucas* and *Alaniz*); *see also United States v.*

Lord, 915 F.3d 1009, 1020 (5th Cir. 2019) ("Because the district court knew it could depart downwardly but chose not to, this court lacks jurisdiction to review the Lords' argument that they were entitled to a downward departure.").

The Eighth, Tenth, Eleventh___ Circuits have all retained their pre-*Booker* jurisdictional rules, too. *United States v. Beyer*, 878 F.3d 610, 615–16 (8th Cir. 2017) ("This court has 'jurisdiction to review a district court's decision not to depart only where the decision is based on the district court's legally erroneous determination that it lacked authority to consider a particular mitigating factor.'") (quoting *United States v. Patten*, 397 F.3d 1100, 1105 (8th Cir. 2005)); *United States v. Sandoval*, 959 F.3d 1243, 1245 n.2 (10th Cir. 2020) ("Thus, we do not review the district court's decision not to depart from the Guidelines."); *United States v. Stines*, 34 F.4th 1315, 1321 (11th Cir. 2022) ("[A] district court's denial of a downward departure request is a discretionary decision that is not reviewable unless the district court erroneously believed it lacked the authority to grant one.") (citing *United States v. Chase*, 174 F.3d 1193, 1195 (11th Cir. 1999)).

III. THE "NO-JURISDICTION" RULE PREVENTS APPELLATE COURTS FROM DISCHARGING THEIR DUTIES UNDER THE ADVISORY GUIDELINE REGIME.

Even after *Booker*, all levels of federal courts and the Sentencing Commission continue to work toward development of more appropriate guidelines. Appellate courts have an important role to play in

facilitating the evolution of the guidelines. *Rita v. United States*, 551 U.S. 338, 350 (2007). *Rita* specifically focused on decisions about Guidelines departures when explaining how this process should work:

> The Commission's work is ongoing. The statutes and the Guidelines themselves foresee continuous evolution helped by the sentencing courts and courts of appeals in that process. *The sentencing courts, applying the Guidelines in individual cases, may depart* (either pursuant to the Guidelines or, since *Booker*, by imposing a non-Guidelines sentence). The judges will set forth their reasons. *The courts of appeals will determine the reasonableness of the resulting sentence.* The Commission will collect and examine the results. In doing so, it may obtain advice from prosecutors, defenders, law enforcement groups, civil liberties associations, experts in penology, and others. And it can revise the Guidelines accordingly.

Rita, 551 U.S. at 350.

By refusing to review a judge's departure decision, the Fifth Circuit's no-jurisdiction rule stymies the institutional back-and-forth envisioned in *Rita*. Just as the Commission benefits from appellate decisions both affirming and reversing sentences imposed under the advisory guidelines, the Commission would benefit from appellate analysis of the departure provisions. But under the Fifth Circuit's rule, those decisions are only reviewed if the district court grants a departure.

At the very least, the appellate court should review the decision not to depart before applying the presumption of reasonableness. That presumption is based upon the match between the sentencing judge's fact-specific determination at the "retail" level and the Sentencing Commission's view at the "wholesale" level. *Rita*, 551 U.S. at 348–351. But the Commission has acknowledged that its wholesale guidelines "may not have adequately taken into account" certain circumstances. U.S.S.G. § 5K2.20(a)(2)(A), p.s. Where a defendant demonstrates that he falls within those circumstances, the match between the guidelines and the sentence imposed becomes much less compelling. Where, as here, the appellate court simply dismisses an appeal because the defendant sought to invoke a Guideline departure provision, no one benefits. It makes little sense to give appellate deference to the Commission's work on the offense-level and criminal-history guidelines while ignoring its work on departure guidelines and policy statements. Better to review the decision not to depart, both as a matter of fairness and to benefit the Commission and the entire federal sentencing system.

CONCLUSION

This Court should grant the petition and set this case for a decision on the merits.

Respectfully submitted,

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United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
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No. 21-11035
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MIGUEL JESUS RODRIGUEZ-VILLANUEVA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:20-CR-555-1

Before SOUTHWICK, OLDHAM, and WILSON, *Circuit Judges*.

PER CURIAM:*

Miguel Jesus Rodriguez-Villanueva appeals the 21-month sentence imposed subsequent to his conviction for illegal reentry after having been previously removed, pursuant to 8 U.S.C. § 1326(a). His sole argument on

* 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.

appeal is that we have jurisdiction to review the district court's denial of his motion for a downward departure.

Rodriguez-Villanueva concedes that the argument is foreclosed by *United States v. Lucas*, 516 F.3d 316, 350–51 (5th Cir. 2008), and *United States v. Alaniz*, 726 F.3d 586, 627 (5th Cir. 2013), but he wishes to preserve it for further review. The Government has moved, without opposition, for summary affirmance.

There is nothing in the record to indicate that the district court erroneously believed that it did not have the authority to depart. *See United States v. Fillmore*, 889 F.3d 249, 255 (5th Cir. 2018). Therefore, we do not have jurisdiction to review the denial of the motion for a downward departure. *See id.* Accordingly, this appeal is DISMISSED for lack of jurisdiction. The motion for summary affirmance is DENIED. The Government's alternative motion for an extension of time is, likewise, DENIED.