

United States Court of Appeals for the Fifth Circuit

No. 25-50608
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 8, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

PAUL LUJAN,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:25-CR-19-1

Before WIENER, WILLETT, and WILSON, *Circuit Judges*.

PER CURIAM:*

Paul Lujan appeals the sentence imposed upon his guilty plea conviction for six counts of possession with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine. He argues that (1) his appeal waiver does not bar this appeal because (a) it was invalidated by the district court's uncontested statement at sentencing that

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

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he had a right to appeal, and (b) it cannot bar review of an unconstitutional sentence; and (2) his above-guidelines sentence is unconstitutional. The Government and Lujan dispute whether the appeal waiver in his plea agreement bars these claims. They agree, however, that Lujan's arguments are foreclosed by this court's decisions. Accordingly, the Government seeks summary affirmance, to which Lujan takes no position.

We pretermitt consideration of the applicability of Lujan's appellate waiver because summary affirmance is appropriate in this case. *See United States v. Thompson*, 54 F.4th 849, 851 (5th Cir. 2022). As Lujan concedes, his challenge to the constitutionality of his sentence is foreclosed by *United States v. Hernandez*, 633 F.3d 370, 373–74 (5th Cir. 2011). Summary affirmance is thus appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

The Government's motion to dismiss this appeal based on the appeal waiver in Lujan's plea agreement is DENIED. Its motion for summary affirmance is GRANTED, and the district court's judgment is AFFIRMED. The Government's alternative motion for an extension of time in which to file a brief is DENIED.