

United States Court of Appeals
for the Fifth Circuit

No. 22-51019
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 2, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellant,

versus

LITSSON ANTONIO PEREZ-GALLAN,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:22-CR-427-1

Before DAVIS, STEWART, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

The Government appeals the dismissal of an indictment charging Litsson Antonio Perez-Gallan under 18 U.S.C. § 922(g)(8) with possession of a firearm by someone subject to a domestic violence restraining order. Perez-Gallan moves for summary affirmance, relying on *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023), *cert. granted*, 2023 WL 4278450 (U.S.

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

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June 30, 2023) (No. 22-915). Alternatively, Perez-Gallan moves for an extension of time to file an appellee brief.

As the parties concede, the Government's appeal is foreclosed by *Rahimi*, 61 F.4th at 461. The grant of certiorari in *Rahimi* does not override this court's precedent. See *Wicker v. McCotter*, 798 F.2d 155, 157-58 (5th Cir. 1986).

Accordingly, Perez-Gallan's motion for summary affirmance is GRANTED, his alternative motion for an extension of time to file his appellee brief is DENIED, and the judgment of the district court is AFFIRMED. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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CLERK

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August 02, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 22-51019 USA v. Perez-Gallan
USDC No. 4:22-CR-427-1

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through **41**, and **5TH CIR. R. 35**, **39**, and **41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By: _____
Lisa E. Ferrara, Deputy Clerk

Enclosure(s)

Mr. Charles E. Fowler Jr.
Mr. Joseph H. Gay Jr.
Mrs. Ashley Chapman Hoff
Mr. Shane O'Neal