

March 1, 2011

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARTIN MOLINA-VALLES,

Defendant - Appellant.

No. 11-1002
(D.C. No. 1:10-CR-00029-MSK-1)
(D. Colo.)

ORDER

Before **LUCERO, GORSUCH**, and **HOLMES**, Circuit Judges.

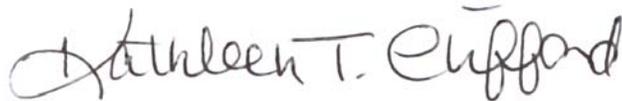
Defendant Martin Molina-Valles seeks to appeal the judgment entered by the district court in his criminal case. The government has moved to dismiss because the notice of appeal is untimely.

In a criminal case, a defendant must file a notice of appeal within 14 days after entry of judgment. *See* Fed. R. App. P. 4(b)(1)(A)(i). In this case, the district court entered judgment on September 27, 2010, and the 14-day deadline for filing a notice of appeal expired on Tuesday, October 12, 2010. *See* Fed. R. App. P. 26(a)(1)(C). Defendant filed a notice of appeal on January 4, 2011, which was 84 days past the 14-day filing deadline.

The Government has moved to dismiss this appeal because the notice of appeal was filed beyond the 14-day deadline. Although non-compliance with the time limits in Rule 4(b)(1)(A) is not considered jurisdictional, the United States has properly raised the timeliness issue by filing a motion requesting dismissal of this appeal. “[T]he time bar in Rule 4(b) must be enforced by this court when properly invoked by the government.” *United States v. Mitchell*, 518 F.3d 740, 744 (10th Cir. 2008) (quoting *United States v. Garduno*, 506 F.3d 1287, 1290-91 (10th Cir.2007)).

Accordingly, the United States’ motion to dismiss is **GRANTED**. The Office of the Federal Public Defender’s motion to withdraw is **GRANTED**. The appeal is **DISMISSED**.

Entered for the Court,
Elisabeth A. Shumaker, Clerk

A handwritten signature in black ink that reads "Kathleen T. Clifford". The signature is written in a cursive, flowing style.

Kathleen T. Clifford
Attorney - Deputy Clerk