

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 15, 2011

Lyle W. Cayce
Clerk

No. 09-20758

Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LEVI ESSAU CARDENAS-PENA, also known as Levi Cardenas Pena, also known as Levi Cardenas, also known as Levi Essau Cardenas Pena, also known as Levi Saul Cardenas, also known as Levi S. Cardenas, also known as Levi Cardenas-Pena,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:09-CR-196-1

Before HIGGINBOTHAM, GARZA, and ELROD, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Levi Essau Cardenas-Pena has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Cardenas-Pena has not filed a response but suggested in his notice of appeal that he wished to raise a claim of ineffective assistance of counsel. The record is insufficiently developed to allow

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 09-20758

consideration at this time of Cardenas-Pena's claim of ineffective assistance of counsel; such claims generally "cannot be resolved on direct appeal when [they have] not been raised before the district court since no opportunity existed to develop the record on the merits of the allegations." *United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006) (internal quotation marks and citation omitted). Our independent review of the record and counsel's brief discloses no nonfrivolous issue for appeal. Accordingly, the motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. *See* 5TH CIR. R. 42.2.