

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

United States Court of Appeals  
Fifth Circuit

**FILED**

October 21, 2011

Lyle W. Cayce  
Clerk

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No. 11-40335  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARIO GUTIERREZ-PENA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:09-CR-142-1

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Before BENAVIDES, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

The Federal Public Defender appointed to represent Mario Gutierrez-Pena (Gutierrez) has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Gutierrez has not filed a response. We have reviewed counsel's brief and the relevant portions of the record reflected therein. We concur with counsel's assessment that the appeal presents no nonfrivolous issue for appellate review. Accordingly, counsel's 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.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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