

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

United States Court of Appeals  
Fifth Circuit

**FILED**

June 1, 2009

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No. 08-10492  
Conference Calendar

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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JOSE L SILVA

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:06-CR-188-7

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ON PETITION FOR REHEARING AND/OR REHEARING EN BANC

Before JONES, Chief Judge, and JOLLY and ELROD, Circuit Judges.

PER CURIAM:\*

Jose L. Silva's petition for panel rehearing is GRANTED, our prior panel opinion is WITHDRAWN, and this opinion is SUBSTITUTED therefor. No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc (FED. R. APP. P. and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED. The

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

attorney appointed to represent Silva has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Silva has filed a response. Our independent review of the record, counsel's brief, and Silva's response discloses no nonfrivolous issue for appeal. 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. Silva's motion for appointment of counsel is DENIED.