

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 15, 2009

Charles R. Fulbruge III
Clerk

No. 08-50871
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DELFINO HERNANDEZ-GALINDO,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:08-CR-86-3

Before KING, JOLLY, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Delfino Hernandez-Galindo (Hernandez) has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Hernandez has filed a response. The record is insufficiently developed to allow consideration at this time of Hernandez's claims 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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, counsel’s brief, and Hernandez’s response 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.