

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

United States Court of Appeals
Fifth Circuit

FILED

March 9, 2011

Lyle W. Cayce
Clerk

No. 10-40572
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAMIEN VARGAS-PENA, also known as Domingo Alvarado-Cantu, also known
as Jorge Taran-Beltran,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:10-CR-50-1

Before HIGGINBOTHAM, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Damien Vargas-Pena has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Vargas-Pena has filed a response, which includes a claim that counsel rendered ineffective assistance. The record is insufficiently developed to allow consideration at this time of Vargas-Pena's claim of ineffective assistance of counsel. Such claims generally "cannot be

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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resolved on direct appeal when [they have] not been raised¹ 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, counsel’s brief, and Vargas-Pena’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.

¹ At his first plea colloquy hearing, Vargas-Pena made a passing remark about his counsel’s effectiveness, but no record was developed on this point.