

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

United States Court of Appeals  
Fifth Circuit

**FILED**

October 16, 2012

Lyle W. Cayce  
Clerk

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No. 11-40937  
Summary Calendar

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JESUS NATIVIDAD SANTOS-SANCHEZ,

Plaintiff-Appellant

v.

UNITED STATES OF AMERICA,

Defendant-Appellee

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:06-CV-153

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Before WIENER, ELROD, and GRAVES, Circuit Judges.

PER CURIAM:\*

Jesus Natividad Santos-Sanchez (Santos) petitioned the district court for a writ of coram nobis, alleging that he received ineffective assistance of counsel and seeking to vacate his conviction for aiding and abetting the illegal entry of an alien. The district court denied the petition, finding that counsel's performance was deficient in light of *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), but that Santos failed to demonstrate prejudice under *Strickland v. Washington*, 466 U.S. 688 (1984). Santos contends that the district court erred when it

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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concluded that he had not suffered prejudice and abused its discretion when it denied coram nobis relief.

On appeal from a district court's denial of a petition for a writ of coram nobis, this court reviews factual findings for clear error, questions of law de novo, and the district court's ultimate decision to deny the writ for abuse of discretion. *Santos-Sanchez v. United States*, 548 F.3d 327, 330 (5th Cir. 2008), *vacated on other grounds*, 130 S. Ct. 2340 (2010). In *United States v. Amer*, 681 F.3d 211, 212-14 (5th Cir. 2012), this court held that *Padilla* announced a new rule that does not apply retroactively to cases on collateral review.

Without the benefit of *Padilla*, Santos cannot, for the reasons this court set forth in its earlier opinion, demonstrate that counsel's performance was deficient for failing to warn him of the immigration consequences of his guilty plea or, concomitantly, that the district court abused its discretion when it denied his petition. *See Santos-Sanchez*, 548 F.3d at 334-36. Consequently, the court does not reach Santos's argument that he was prejudiced by counsel's performance and that the district court erred when it concluded that, even if he did show prejudice, he was not entitled to coram nobis relief. *See Strickland*, 466 U.S. at 697.

The judgment of the district court is AFFIRMED.