

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

United States Court of Appeals
Fifth Circuit

FILED

November 13, 2013

Lyle W. Cayce
Clerk

No. 12-20694

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARTIN ALVAREZ GAMEZ, also known as Martin Alvarez, also known as Martin Carlos-Gamez, also known as Martin Alvarez-Gamez, also known as Juan Garcia-Rivera, also known as Martin Carlos Alvarez-Gamez, also known as Carlos Alvarez, also known as Martin Gamez Alvarez, also known as Eduardo Gamez Alvarez,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:11-CR-559-1

Before HIGGINBOTHAM, DENNIS, and GRAVES, Circuit Judges.

PER CURIAM:*

Martin Alvarez Gamez pleaded guilty to illegal reentry of a deported alien after an aggravated felony conviction. He was sentenced to 78 months of imprisonment and no term of supervised release. Gamez argues that his guilty plea was not knowing and voluntary because trial counsel failed to recognize,

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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investigate, and advise him about a potential defense to his offense of conviction. Specifically, he contends that although counsel did investigate and advise him of a possible defense based on derivative citizenship, counsel did not recognize, investigate, and advise him that he may have had a possible defense to the illegal reentry charge based on acquisition of citizenship at birth.

Gamez did not raise this ineffective assistance of counsel claim in the district court. “[T]he general rule in this circuit is that a claim for ineffective assistance of counsel cannot be resolved on direct appeal when the claim has not been raised 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). Because we conclude that “we cannot fairly evaluate the claim from the record,” we decline to consider Gamez’s ineffective assistance of counsel claim on appeal without prejudice to his right to raise the claim in a timely 28 U.S.C. § 2255 proceeding. *See United States v. Gulley*, 526 F.3d 809, 821-22 (5th Cir. 2008).

Accordingly, the judgment of the district court is AFFIRMED.