

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

\_\_\_\_\_  
No. 15-20413  
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United States Court of Appeals  
Fifth Circuit

**FILED**

May 23, 2016

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RAFAEL E. RIVAS-LOPEZ,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:09-CV-3335  
USDC No. 4:04-CR-145-2  
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Before CLEMENT, ELROD, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Rafael E. Rivas-Lopez, federal prisoner # 16285-179, requests a certificate of appealability (COA) so that he may appeal the district court's dismissal of his 28 U.S.C. § 2255 motion. His request to supplement his COA motion and his motion to proceed in forma pauperis are GRANTED.

In 2012, we remanded the case to the district court and ordered it to hold an evidentiary hearing on Rivas-Lopez's claim that he received ineffective

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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assistance of counsel during the plea negotiating stage of his criminal proceedings. Rivas-Lopez now challenges the district court's failure to appoint counsel to represent him at that hearing. Rule 8(c) of the Rules Governing § 2255 Proceedings required the district court to appoint Rivas-Lopez counsel for the evidentiary hearing because Rivas-Lopez was unable to afford retained counsel. *See United States v. Vasquez*, 7 F.3d 81, 84 (5th Cir. 1993). Rivas-Lopez's motion for a COA is therefore GRANTED. The district court's judgment is VACATED, and the case is REMANDED for a new evidentiary hearing with appointed counsel. Rivas-Lopez's motion for the preparation of a transcript at the Government's expense is DENIED.