

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

No. 17-40205
Conference Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 20, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LINO HERNANDEZ-BENITEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:16-CR-1310-1

Before JONES, DENNIS, and GRAVES, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Lino Hernandez-Benitez has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Hernandez-Benitez has filed a motion for the appointment of new counsel. We have reviewed counsel's brief and the relevant portions of the record reflected therein, as well as Hernandez-

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Benitez's motion. We concur with counsel's assessment that the appeal presents no nonfrivolous issue for appellate review. To the extent Hernandez-Benitez asserts a claim of ineffective assistance of counsel in his motion, the record is not sufficiently developed to allow us to make a fair evaluation of the claim; we therefore decline to consider it without prejudice to collateral review. *See United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014).

Accordingly, counsel's 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. Hernandez-Benitez's motion for the appointment of new counsel is DENIED.