

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-50368  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DOLORES ANN FLORES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of  
USDC No. EP-98-CR-1011-ALL-DB  
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November 17, 1999

Before SMITH, BARKSDALE, and PARKER, Circuit Judges.

PER CURIAM:\*

Flores argues on direct appeal that her trial attorney provided ineffective-assistance-of-counsel because he failed to file motions to suppress which argued that: 1) customs agents lacked reasonable suspicion to justify a "second avenue" inspection; and 2) use of military personnel and a military canine at the border check point violated the Posse Comitatus Act, 18 U.S.C. § 1385. Although not framed as an issue on

appeal, Flores also asks this court to review the alleged

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

violation of the Posse Comitatus Act for plain error.

A claim of ineffective assistance is generally not reviewable on direct appeal unless the district court has already addressed the contention. United States v. Gibson, 55 F.3d 173, 179 (5th Cir. 1995). If the claim is raised for the first time on appeal, this court will reach the merits of the claim only in rare cases where the record allows the court to evaluate fairly the merits of the claim. United States v. Higdon, 832 F.2d 312, 314 (5th Cir. 1987). Because Flores' claims are based upon a failure to file motions to suppress where no record has been developed below, her case is not one of those rare exceptions. See United States v. Maria-Martinez, 143 F.3d 914, 916 (5th Cir. 1998). Any ineffective-assistance claim she may wish to bring may be brought in a 28 U.S.C. § 2255 motion.

In a two-sentence argument, Flores asks this court to review the alleged violation of the Posse Comitatus Act for plain error. Even if Flores had properly framed and argued this issue, it would not prevail. The facts of this case present no basis to warrant the creation or application of an exclusionary rule in the context of plain error review. See United States v. Hartley, 796 F.2d 112, 115 (5th Cir. 1986).

Because Flores' arguments are not cognizable and without merit, we hereby dismiss her appeal as frivolous. 5TH CIR. R. 42.2.

APPEAL DISMISSED.