

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

United States Court of Appeals
Fifth Circuit

FILED

April 14, 2014

Lyle W. Cayce
Clerk

No. 13-20207
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EMILIO DE LA GARZA-MONTEMAYOR, also known as Emilio Del La Garza-Montemayor, also known as Emilio DeLaGarza, also known as Emilio Montemayor DeLaGarza, also known as Emilio DeLaGarza-Montemayor, also known as Emmillio DeLaGarza, also known as Emmillo De La Garza,

Defendant-Appellant

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 4:12-CR-418-1

Before KING, DAVIS, and ELROD, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Emilio De La Garza-Montemayor 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). De La Garza-Montemayor has filed a response. We have

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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reviewed counsel's brief and the relevant portions of the record reflected therein, as well as De La Garza-Montemayor's response. We concur with counsel's assessment that the appeal presents no nonfrivolous issue for appellate review. In his response, De La Garza-Montemayor contends, *inter alia*, that his below-range sentence should not be entitled to a presumption of reasonableness because his guideline sentencing range was calculated under U.S.S.G. § 2L1.2, which he argues is not based on empirical evidence. That contention is foreclosed, *see United States v. Duarte*, 569 F.3d 528, 529-31 (5th Cir. 2009), but by raising the argument De La Garza-Montemayor has preserved it for further review.

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.