

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

United States Court of Appeals  
Fifth Circuit

**FILED**

February 2, 2011

Lyle W. Cayce  
Clerk

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No. 10-40496  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE DANILO BRIZUELA-RAMOS,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:09-CR-1041-1

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Before HIGGINBOTHAM, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:\*

The Federal Public Defender appointed to represent Jose Danilo Brizuela-Ramos has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Brizuela-Ramos has filed a response. He contends that the Government breached its plea agreement with him. Specifically, Brizuela-Ramos contends that the Government failed to argue for the maximum acceptance of responsibility points. However, the plea agreement provided that the Government was not bound to that promise “should it be

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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judged by the Government [that] the Defendant has committed . . . any additional crime.” The Government presented un rebutted evidence that Brizuela-Ramos participated in an assault on a fellow inmate while in prison awaiting sentencing. This evidence was sufficient to support the district court’s conclusion that the Government was released from its promise. The plea agreement did not require a conviction, as Brizuela-Ramos appears to argue.

Our independent review of the record, counsel’s brief, and Brizuela-Ramos’s response discloses no nonfrivolous issue for appeal. 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.