

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

May 3, 2021

Lyle W. Cayce
Clerk

No. 19-11283
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE GUTIERREZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CR-519-4

Before DAVIS, ELROD, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

The attorney appointed to represent Jose Gutierrez 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). Gutierrez has filed a response. The record is not sufficiently developed to

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 19-11283

allow us to make a fair evaluation of Gutierrez's claim of ineffective assistance of counsel; we therefore decline to consider the claim without prejudice to collateral review. *See United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014).

We have reviewed counsel's brief and the relevant portions of the record reflected therein, as well as Gutierrez's response. We concur with counsel's assessment that the appeal presents no nonfrivolous issue for appellate review. Accordingly, the 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. Gutierrez's request for the appointment of new appellate counsel is DENIED as untimely. *See United States v. Wagner*, 158 F.3d 901, 902-03 (5th Cir. 1998).