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October 3, 2022

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

Mr. Scott S. Harris

United States v. Humberto Calera
Fifth Circuit, No. 22-40200

I am writing requesting an extension for reasons further listed; I am currently in Louisiana Pa USP, at a Stop Down / Debrief, Program to remove Eng Allegation, and being held in the Special (Administrat housing that until I get debriefed from; I will again get stressed possibly two more times to a deep-out unit. I have been here since September 12, 2022, and as of yet, have been unable to receive my legal paper that needed, as well, I need assistance of you finding the Continous Position, and access to Law Library via limited. Further I will probably be here till mid to end of November God willing. Please take into consideration that I am now under 100 days to complete Position. Sorry for the inconvenience

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SUPREME COURT, U.S.

Thank you,

Humberto Calera Jr

United States Court of Appeals
for the Fifth Circuit

No. 22-40200
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
August 25, 2022
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

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versus

HUMBERTO CABRERA,

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:21-CR-747-2

Before JOLLY, JONES, and Ho, Circuit Judges

PER CURIAM:*

The Federal Public Defender appointed to represent Humberto Cabrera 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). Cabrera's motion for leave to file an out-of-time response is GRANTED, and we have considered his response. The record

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 22-40200

is not sufficiently developed to allow us to make a fair evaluation of Cabrera's claims of ineffective assistance of counsel; we therefore decline to consider the claims 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 Cabrera's response. We concur with counsel's assessment that the appeal presents no nonfrivolous issue for appellate 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. Cabrera's motion for the appointment of new counsel is DENIED as untimely. See *United States v. Wagner*, 158 F.3d 901, 902-03 (5th Cir. 1998). The motion to seal the pro se response and the related motion is GRANTED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 25, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 22-40200 USA v. Cabrera
USDC No. 2:21-CR-747-2

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through **41**, and **5TH CIR. R. 35**, **39**, and **41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Rachal

By: _____
Christina C. Rachal, Deputy Clerk

Enclosure(s)

Mr. Humberto Cabrera
Ms. Marjorie A. Meyers
Ms. Carmen Castillo Mitchell
Ms. Kathryn Shephard