

JUL 26 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ELOY GUTIERREZ-BARBA,

Defendant - Appellant.

No. 09-10287

D.C. No. 4:09-cr-00395-CKJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Cindy K. Jorgenson, District Judge, Presiding

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Eloy Gutierrez-Barba appeals from his guilty-plea conviction and 43-month sentence for attempted illegal re-entry after deportation, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Gutierrez-Barba’s counsel has filed a brief stating there are no grounds for relief, along with a motion

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

to withdraw as counsel of record. We have provided the appellant with the opportunity to file a pro se supplemental brief. We construe Gutierrez-Barba's letter, dated January 6, 2010, as a pro se supplemental brief. No answering brief has been filed.

Gutierrez-Barba's motion for appointment of counsel and "Petition for Order Directing Attorney of Record to Surrender Defense Files" and the government's motion for summary affirmance are denied.

Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80-81 (1988), discloses no arguable grounds for relief on direct appeal.

Accordingly, counsel's motion to withdraw is **GRANTED**, and the district court's judgment is **AFFIRMED**.