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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>JOSE VARGAS-FLORES,</p> <p>Defendant - Appellant.</p>
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No. 10-10619

D.C. No. 2:10-cr-01301-GMS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
G. Murray Snow, District Judge, Presiding

Submitted November 21, 2011**

Before: TASHIMA, BERZON, and TALLMAN, Circuit Judges.

Jose Vargas-Flores appeals from his guilty-plea conviction and the 19-month sentence for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Vargas-Flores’s counsel has filed a brief stating there are no grounds for relief, along with a motion to withdraw as counsel of record. We have provided the

* 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).

appellant with the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

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. With respect to the appeal of the conviction and sentence, we dismiss in light of the valid appeal waiver. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000). We decline to address Vargas-Flores's claim of ineffective assistance of counsel on direct appeal as the record is insufficiently developed and his legal representation was not so inadequate that it can be concluded at this point that he obviously was denied his Sixth Amendment right to counsel. *See United States v. McKenna*, 327 F.3d 830, 845 (9th Cir. 2003) ("Claims of ineffective assistance of counsel are generally inappropriate on direct appeal.").

Vargas-Flores's motion for leave to file a supplemental opening brief pursuant to *Anders* is denied.

Counsel's motion to withdraw is **GRANTED**.

DISMISSED.