

MAY 18 2015

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NOT FOR PUBLICATION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.

JOSE GUADALUPE VARGAS-FRIAS,

Defendant - Appellant.

No. 13-10347

D.C. No. 1:11-cr-00282-AWI

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Submitted May 13, 2015**

Before: LEAVY, CALLAHAN, and M. SMITH, Circuit Judges.

Jose Guadalupe Vargas-Frias appeals from the district court's judgment and challenges the 58-month sentence imposed following his guilty-plea conviction 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-Frias's counsel has

* 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).

filed a brief stating that there are no grounds for relief, along with a motion to withdraw as counsel of record. Vargas-Frias has filed a pro se supplemental opening brief, the government has filed an answering brief, and Vargas-Frias has filed a pro se reply brief.

Our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80 (1988), discloses no arguable grounds for relief on direct appeal. We decline to consider Vargas-Frias's claim of ineffective assistance of counsel on direct appeal because the record is insufficiently developed to evaluate that claim, and Vargas-Frias's legal representation was not so inadequate as to obviously deny his right to counsel. *See United States v. Rahman*, 642 F.3d 1257, 1259-60 (9th Cir. 2011).

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

AFFIRMED.