

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

February 22, 2013

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 12-50197

Summary Calendar  
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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE RAMIRO VICHARELLY,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:11-CR-259-1  
\_\_\_\_\_

Before HIGGINBOTHAM, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Jose Ramiro Vicharely appeals his convictions of conspiracy to commit visa fraud and conspiracy to encourage aliens to illegally enter and reside in the United States. Vicharely argues that the district court erred by denying his motion to withdraw his guilty plea.

A defendant does not have an absolute right to withdraw a guilty plea but, rather, bears the burden of showing that “a fair and just reason” warrants the withdrawal. *United States v. Powell*, 354 F.3d 362, 370 (5th Cir. 2003). We

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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review the denial of a motion to withdraw for an abuse of discretion. *Id.* In light of the record evidence, the parties' arguments, and the relevant, non-exclusive factors originally set forth in *United States v. Carr*, 740 F.2d 339, 343-44 (5th Cir. 1984), we conclude that Vicharely, who admitted to detailed facts of his guilt while under oath over four months before he filed the motion to withdraw, fails to show an abuse of discretion by the district court. *See Powell*, 354 F.3d at 370; *United States v. Lampazianie*, 251 F.3d 519, 524-25 (5th Cir. 2001).

AFFIRMED.