

DEC 07 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS RODRIGUEZ,

Defendant - Appellant.

No. 10-10291

D.C. No. 2:04-cr-00387-MCE-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Morrison C. England, District Judge, Presiding

Submitted November 28, 2011\*\*  
San Francisco, California

Before: THOMAS and CLIFTON, Circuit Judges, and PRO, District Judge.\*\*\*

The parties agree this matter should be remanded to the Eastern District of California for consideration of a new trial motion based on newly discovered

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\* 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).

\*\*\* The Honorable Philip M. Pro, District Judge for the U.S. District Court for Nevada, sitting by designation.

evidence prior to this Court resolving the issues in this appeal. The parties dispute only whether the Court should reassign this matter on remand. The Court denies the request to reassign, as there is no evidence of personal bias and no unusual circumstances exist to support reassignment. *McSherry v. City of Long Beach*, 423 F.3d 1015, 1023 (9th Cir. 2005); *Hernandez v. City of El Monte*, 138 F.3d 393, 402 (9th Cir. 1998). All issues raised in Appellant's Opening Brief in this appeal are preserved for later appeal in the event the district court denies the motion for new trial.

**REMANDED.**