

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i> v. FRED NOBRIGA, <i>Defendant-Appellant.</i>

No. 04-10169
D.C. No.
CR-03-00209-HG
District of Hawaii,
Honolulu
ORDER

Filed January 3, 2006

Before: Kim McLane Wardlaw and Marsha S. Berzon,
Circuit Judges, and James M. Fitzgerald,* District Judge.

ORDER

The petition for rehearing en banc is DENIED as moot. The opinion filed May 20, 2005, and reported at 408 F.3d 1178, is withdrawn. That opinion shall not be cited as precedent by or to this court or any district court of the Ninth Circuit.

Submission of this case is withdrawn and resubmission of the case is deferred pending issuance of the opinion of the en banc court in *Fernandez-Ruiz v. Gonzales*, No. 03-74533.

*The Honorable James M. Fitzgerald, Senior United States District Judge for the District of Alaska, sitting by designation.

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