

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROBERTO BUSTOS-OCHOA,
Defendant-Appellant.

No. 11-50471

D.C. No.
3:10-cr-04188-DMS-1
Southern District of
California, San Diego

ORDER

Filed April 22, 2013

Before: Dorothy W. Nelson and Diarmuid F. O’Scannlain,
Circuit Judges, and James K. Singleton, Senior District
Judge.*

ORDER

The opinion filed in this case on December 18, 2012 is hereby amended as follows:

On page 5 of the slip opinion, lines 29–32, delete the following citation: “*See* 8 U.S.C. § 1229c(a)(1) (noting that aliens deportable under 8 U.S.C. § 1227(1)(2)(A)(iii)—the aggravated felony statute—are not eligible for voluntary

* The Honorable James K. Singleton, Senior District Judge for the U.S. District Court for Alaska, sitting by designation.

departure).” Replace this citation with the following: “*See* 8 C.F.R. § 1240.26(b)(1) (noting that aliens who have “been convicted of a crime described in section 101(a)(43) of the Act”—the section defining aggravated felonies—are not eligible for voluntary departure); *see also* 8 U.S.C. § 1229c(e) (“The Attorney General may by regulation limit eligibility for voluntary departure under this section for any class or classes of aliens.”).”

With this amendment, the panel has voted to deny the petition for rehearing and rehearing en banc. The panel has voted unanimously to deny the petition for rehearing. Judge O’Scannlain has voted to deny the petition for rehearing en banc, and Judges Nelson and Singleton have so recommended. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and petition for rehearing en banc is DENIED. No further petitions for panel rehearing or for rehearing en banc will be entertained.