

SEP 07 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>HERBERT FRANKLIN VANEGAS- ORTIZ,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 12-10135

D.C. No. 4:11-cr-03664-RCC-
HCE-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding

Submitted September 4, 2012**
San Francisco, California

Before: REINHARDT, WARDLAW, and BEA, Circuit Judges.

We have reviewed the record and the opening brief, and conclude that the questions raised in this appeal are foreclosed by Ninth Circuit authority. *See*

* 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).

United States v. Johnson, 581 F.3d 994 (9th Cir. 2009); *United States v. Medina-Beltran*, 542 F.3d 729 (9th Cir. 2008); *see also United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). Although two other circuits are in disagreement with our circuit's precedent, *see United States v. Divens*, 650 F.3d 343 (4th Cir. 2011); *United States v. Lee*, 653 F.3d 170 (2nd Cir. 2011), we are nevertheless bound to follow this precedent, unless our court were to convene a rehearing en banc to reconsider this precedent. The parties may file a petition for rehearing en banc so that the full court may consider their arguments that *Johnson* and *Medina-Beltran* are wrongly decided.

Accordingly, appellee's motion for summary affirmance of the district court's judgment is granted.

AFFIRMED.