

**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 The opinion filed May 20, 2005, and reported at 408 F.3d 1178, is withdrawn.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Submission of this case is withdrawn and resubmission of the case is deferred pending issuance of the opinion of the en banc court in *Fernandez-Ruiz v. Gonzales*, No. 03-74533.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.

---

PRINTED FOR  
ADMINISTRATIVE OFFICE—U.S. COURTS  
BY THOMSON/WEST—SAN FRANCISCO

The summary, which does not constitute a part of the opinion of the court, is copyrighted  
© 2006 Thomson/West.