

PUBLISH

September 30, 2016

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 15-2025

MIGUEL BUSTAMANTE-CONCHAS,

Defendant - Appellant.

ORDER

Before **TYMKOVICH**, Chief Judge, **KELLY, BRISCOE, LUCERO, HARTZ, GORSUCH, HOLMES, MATHESON, BACHARACH, PHILLIPS, McHUGH,** and **MORITZ**, Circuit Judges.

This matter is before the court on appellant's *Petition for Rehearing En Banc*. We also have a response from the United States. In addition, on September 9, 2016, the appellant filed an unopposed *Motion for Leave to File Reply to Appellee's Response to Appellant's Petition for Rehearing En Banc*.

Upon consideration, a poll was called and the request for en banc rehearing is GRANTED limited to the issues identified below. *See* 10th Cir. R. 35.6 (noting the effect of the grant of en banc rehearing is to vacate the judgment and restore the case on the docket). The parties shall file supplemental memorandum briefs addressing these issues:


1. Is the third or fourth prong of the plain error test satisfied when a defendant is not offered any chance to speak at his original sentencing hearing?
2. Should extraordinary circumstances serve as an exception to any answer above? If so, what should constitute extraordinary circumstances?
3. Should a defendant be required to proffer a proposed allocution statement to establish that an allocution error seriously affected the fairness, integrity, or public reputation of judicial proceedings?

The appellant's supplemental brief shall be filed on or before Monday October 31, 2016. The United States' supplemental brief shall be filed on or before Thursday December 1, 2016. The appellant may file an optional reply on or before Friday December 16, 2016. Within 2 business days of the electronic filing of each brief 20 hard copies must be received in the office of the clerk. In addition, the primary briefs shall be limited to 20 pages in length in a 13 or 14 point font, and any reply shall be limited to 10 pages in length.

The appeal will be set for en banc hearing on Tuesday January 17, 2017 at the Byron White United States Courthouse in Denver. The parties will be advised of the exact time and will receive additional information regarding the hearing via separate communication. In light of the January hearing date requests for extension of time on the briefing are strongly discouraged.

Finally, the motion to file a reply in support of the petition for en banc rehearing is denied as unnecessary.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk