

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-40367

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

RAFAEL RIOS MARROQUIN, also known as Tomas Andres Marroquin,

Defendant - Appellant

consolidated with

16-40368

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

RAFAEL RIOS MARROQUIN,

Defendant - Appellant

Appeals from the United States District Court
for the Southern District of Texas

ON PETITION FOR REHEARING EN BANC

No. 16-40367
c/w 16-40368

Before WIENER, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:

The Court having been polled at the request of one of its members, and a majority of the judges who are in regular service and not disqualified not having voted in favor (Fed. R. Ap. P. 35 and 5th Cir. R. 35), rehearing en banc is DENIED. In the en banc poll, three judges voted in favor of rehearing (Judges Jones, Smith, and Ho), and twelve judges voted against rehearing (Chief Judge Stewart and Judges Dennis, Clement, Prado, Owen, Elrod, Southwick, Haynes, Graves, Higginson, Costa, and Willett).

Judge Smith, joined by Judges Jones and Ho, dissents from the Court's denial of rehearing en banc, and his dissent is attached.

ENTERED FOR THE COURT:

A handwritten signature in cursive script that reads "Gregg Costa". The signature is written in black ink and is positioned above a horizontal line.

GREGG COSTA
United States Circuit Judge