

FOR PUBLICATION

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

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

JOSE ANTONIO GONZALEZ-
VALENCIA, AKA Jose Antonio
Valencia Gonzalez,

Defendant-Appellee.

No. 19-30222

D.C. No. 1:18-cr-
02044-SAB-1

ORDER

Appeal from the United States District Court
for the Eastern District of Washington
Stanley A. Bastian, Chief District Judge, Presiding

Argued and Submitted December 7, 2020
San Francisco, California

Filed February 28, 2023

Before: Danny J. Boggs, * Milan D. Smith, Jr., and Mark J.
Bennett, Circuit Judges.

* The Honorable Danny J. Boggs, United States Circuit Judge for the
U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

SUMMARY**

Criminal Law

In light of the intervening decision in *United States v. Bastide-Hernandez*, 39 F.4th 1187 (9th Cir. 2022) (en banc), *cert. denied*, No. 22-6281, 2023 WL 350056 (U.S. Jan. 23, 2023), the panel filed an order (1) vacating its opinion in *United States v. Gonzalez-Valencia*, 3 F.4th 1208 (9th Cir. 2021), reversing the district court's dismissal of the indictment, and remanding for further proceedings consistent with *Bastide-Hernandez*; (2) denying a petition for panel rehearing; and (3) denying on behalf of the court a petition for rehearing en banc.

COUNSEL

Richard C. Burson (argued), Assistant United States Attorney; William D. Hyslop, United States Attorney; Office of the United States Attorney; Yakima, Washington; for Plaintiff-Appellant.

Paul E. Shelton (argued), Federal Defenders of Eastern Washington and Idaho, Yakima, Washington, for Defendant-Appellee.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

ORDER

In light of the intervening en banc decision in *United States v. Bastide-Hernandez*, 39 F.4th 1187 (9th Cir. 2022) (en banc), *cert. denied*, No. 22-6281, 2023 WL 350056 (U.S. Jan. 23, 2023), we vacate our opinion in *United States v. Gonzalez-Valencia*, 3 F.4th 1208 (9th Cir. 2021), reverse the district court's dismissal of the indictment, and remand for proceedings consistent with *Bastide-Hernandez*.

With this order, the panel unanimously votes to deny the petition for panel rehearing. Judge M. Smith and Judge Bennett vote to deny the petition for rehearing en banc, and Judge Boggs so recommends. The full court has been advised of the petition for rehearing en banc, and no judge requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc, filed August 3, 2021, is **DENIED**. No further petitions for panel rehearing or rehearing en banc will be entertained.

REVERSED and REMANDED.