

**FILED**

**FOR PUBLICATION**

FEB 03 2010

**UNITED STATES COURT OF APPEALS**

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**FOR THE NINTH CIRCUIT**

**UNITED STATES OF AMERICA,**

Plaintiff - Appellee,

v.

**GUILLERMO AGUILA-MONTES DE  
OCA,**

Defendant - Appellant.

No. 05-50170

D.C. No. CR-04-02175-RTB

**ORDER**

**KOZINSKI**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.