

**FILED**

**FOR PUBLICATION**

MAR 01 2012

**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.

**DAVID YEPEZ,**

Defendant - Appellant.

No. 09-50271

D.C. No. 3:08-cr-03499-LAB-1

**ORDER**

**UNITED STATES OF AMERICA,**

Plaintiff - Appellant,

v.

**AUDENAGO ACOSTA-MONTES,**

Defendant - Appellee.

No. 09-50409

D.C. No. 3:08-cr-02350-L-1

**KOZINSKI**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that these cases 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.

Judge Christen did not participate in the deliberations or vote in these cases.