

December 4, 2007

Elisabeth A. Shumaker
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

No. 06-3054

GUADALUPE ALBERTO
GARCIA-LARA, JR., also known as
Jose Perez-Gonzales, also known as
Armando Preciado-Ramirez,

Defendant - Appellee.

ORDER

Before **TACHA**, Chief Circuit Judge, **KELLY, HENRY, BRISCOE, LUCERO, MURPHY, HARTZ, O'BRIEN, McCONNELL, TYMKOVICH, GORSUCH,** and **HOLMES**, Circuit Judges.

Defendant-Appellee's petition for rehearing, or, in the alternative, to abate decision on rehearing pending the decision of the Supreme Court in *Gall v. United States*, No. 07-7949, is denied by the panel. Judge Lucero votes to grant rehearing, or, in the alternative, to abate decision on rehearing pending the decision in *Gall*.

The petition for rehearing en banc was transmitted to all of the judges of

the court who are in regular active service. A poll was requested and Judges Briscoe, Lucero, Murphy, and O'Brien voted to grant rehearing. Judges Briscoe, Lucero, Murphy, O'Brien, and Tymkovich voted in the alternative to abate decision on rehearing en banc pending *Gall*.

The petition is therefore denied.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER, Clerk