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No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

KENNETH MEDENBACH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

_____

APPENDIX C: NINTH CIRCUIT ORDER

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Respectfully submitted June 27, 2019.

s/Matthew Schindler
Matthew A. Schindler
Attorney for Petitioner

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AUG 29 2018

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

UNITED STATES OF AMERICA,
 	
              Plaintiff-Appellee,
 	
 v.
 	
 KENNETH W. MEDENBACH,
 	
              Defendant-Appellant.
	No. 16-30189
	
	D.C. No. 1:15-cr-00407-MC-1
	District of Oregon,
	Medford
	
	ORDER

Before: GRABER and M. SMITH, Circuit Judges, and KORMAN,[*] District
Judge.

The government is directed to file a response to Appellant's Petition for

Rehearing and Rehearing En Banc, within 21 days of the filed date of this order,

not to exceed 5000 words, on the following questions:

1. Was the sentence "illegal" in that it imposed both a term of imprisonment

and probation? See 18 U.S.C. § 3561(a)(3); United States v. Forbes, 172 F.3d 675

(9th Cir. 1999); see also 18 U.S.C. § 3585(b) (defining a term of imprisonment to

include "credit toward the service of a term of imprisonment" for prior custody).

2. Regardless of your answer to Question 1, assuming that error occurred,

was any error harmless under the test established in United States v. Olano, 507

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[*]   The Honorable Edward R. Korman, United States District Judge for
the Eastern District of New York, sitting by designation.

U.S. 725 (1993)? Please address in particular the third and fourth prongs of the

plain error standard. See United States v. Ameline, 409 F.3d 1073, 1081 (9th Cir.

2005) (en banc) (addressing the fourth prong); see also 18 U.S.C. § 3742(f)(1)

(providing for a remand if the court of appeals determines that a sentence is

illegal).

 Parties who are registered for ECF must file the response electronically

without submission of paper copies. Parties who are not registered ECF filers must

file the original response plus 50 paper copies.