

FOR PUBLICATION

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ERIC BATES; BERT ENOS;  
BABARANTI OLOYEDE; ERIC  
BUMBALA; EDWARD WILLIAMS, on  
behalf of themselves and all others  
similarly situated,

*Plaintiffs-Appellees,*

v.

UNITED PARCEL SERVICE, INC., dba  
UPS,

*Defendant-Appellant.*

No. 04-17295  
D.C. No.  
CV-99-02216-TEH  
ORDER

Filed April 24, 2007

Before: Mary M. Schroeder, Chief Judge.

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**ORDER**

Upon the vote of a majority of nonrecused regular active judges of this court,<sup>1</sup> it is ordered that this case be reheard by the en banc court pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to this court or any district court of the Ninth Circuit, except to the extent adopted by the en banc court.

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<sup>1</sup>Judge Wardlaw is recused.

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