

FILED**FOR PUBLICATION**

SEP 30 2008

UNITED STATES COURT OF APPEALSMOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,**

Plaintiff - Appellee,

v.

**MALIK SMITH, a/k/a Michael Marvin
Montana, Tarid M. Smith, Tarik N.
Smith, Tarik Smith, Tarik Marchand
Smith, Tarik Malik Smith, Milik and
Tarid Smith,**

Defendant - Appellant.

No. 05-50375

D.C. No. CR-03-00728-PA-01

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.