

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

<p>UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i></p> <p style="text-align: center;">v.</p> <p>STATE OF WASHINGTON; SWINOMISH INDIAN TRIBAL COMMUNITY; LUMMI NATION; UPPER SKAGIT INDIAN TRIBE; CONFEDERATED TRIBES AND BANDS OF THE YAKAMA INDIAN NATION; TULALIP TRIBES; PORT GAMBLE S'KLALLAM INDIAN TRIBE; JAMESTOWN S'KLALLAM INDIAN TRIBE,</p> <p style="text-align: center;"><i>Defendants-Appellees,</i></p> <p style="text-align: center;">v.</p> <p>SAMISH INDIAN TRIBE, <i>Movant-Appellant.</i></p>
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No. 08-35794

D.C. Nos.  
2:01-sp-00002-RSM  
2:70-cv-09213-RSM

**ORDER**

Filed August 19, 2009

**ORDER**

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be heard en banc pursuant to Circuit Rule 35-3.

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