

**FILED****FOR PUBLICATION**

AUG 14 2013

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

Plaintiff - Appellee,

v.

**TYMOND J. PRESTON,**

Defendant - Appellant.

No. 11-10511

D.C. No. 3:10-cr-08026-GMS-1

**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 Federal Rule of Appellate Procedure 35(a) and Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Judge Murguia did not participate in the deliberations or vote in this case.