

FILED

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**

MAY 30 2013

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

**FOR THE NINTH CIRCUIT**

**UNITED STATES OF AMERICA,**

Plaintiff - Appellee,

v.

**JOHN R. MALONEY,**

Defendant - Appellant.

No. 11-50311

D.C. No. 3:10-cr-02803-DMS-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.