

FILED**FOR PUBLICATION****MAY 30 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.

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.