

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

ROGER PAUL SMITH, <i>Petitioner-Appellant,</i> v. GEORGE H. BALDWIN, <i>Respondent-Appellee.</i>
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No. 04-35253  
D.C. No.  
CV-98-00059-OMP  
ORDER

Filed April 6, 2007

Before: Mary M. Schroeder, Chief Judge.

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**ORDER**

Upon the vote of a majority of nonrecused regular active judges of this court,<sup>1</sup> it is ordered that this case be reheard by the en banc court pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to this court or any district court of the Ninth Circuit, except to the extent adopted by the en banc court.

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<sup>1</sup>Judge Graber is recused.

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