

**FILED**

SEP 30 2008

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

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**UNITED STATES OF AMERICA,**

Plaintiff - Appellee,

v.

**MALIK SMITH, a/k/a Michael Marvin  
Montana, Tarid M. Smith, Tarik N.  
Smith, Tarik Smith, Tarik Marchand  
Smith, Tarik Malik Smith, Milik and  
Tarid Smith,**

Defendant - Appellant.

No. 05-50375

D.C. No. CR-03-00728-PA-01

**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 Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.