

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

UNITED STATES OF AMERICA <i>Plaintiff-Appellant,</i> v. JOHN MICHAEL FOX, <i>Defendant-Appellee.</i>
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No. 08-30445  
D.C. No.  
3:96-CR-00080-JKS  
ORDER

Filed September 16, 2009

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**ORDER**

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be heard en banc pursuant to Circuit Rule 35-3.

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