

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

UNITED STATES OF AMERICA, <i>Plaintiff-Appellant,</i> v. DAVID NOSAL, <i>Defendant-Appellee.</i>
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No. 10-10038  
D.C. No.  
3:08-cr-00237-  
MHP-1  
ORDER

Filed October 27, 2011

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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 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.