

**FOR PUBLICATION**

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

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

ELVEN JOE SWISHER,  
*Defendant-Appellant.*

No. 11-35796

D.C. Nos.  
1:09-cv-00055-BLW  
1:07-cr-00182-BLW-1

ORDER

Filed May 19, 2015

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**ORDER**

THOMAS, 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.

Judge Tallman did not participate in the deliberations or vote in this case.