

FOR PUBLICATION

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

In re: MARCIANO ELLIS,

MARCIANO ELLIS,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF
WASHINGTON (TACOMA);,

Respondent,

UNITED STATES OF AMERICA,

Real Party in Interest.

No. 01-70724

D.C. No. CR-99-05386-JET

ORDER

Filed December 5, 2002

SCHROEDER, Chief Judge.

Upon the vote of a majority of nonrecused regular active judges of this court, 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.