

**FILED**

**NOV 16 2005**

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

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

V.

JOHN GILBERT OGLES,

Defendant - Appellee.

No. 03-10439

D.C. No. CR-02-01805-CKJ

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

JOHN GILBERT OGLES,

Defendant - Appellant.

No. 04-10069

D.C. No. CR-02-01805-CKJ

ORDER

Before: 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.