

**FILED**

SEP 16 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**UNITED STATES OF AMERICA,**

Plaintiff - Appellant,

v.

**JOHN MICHAEL FOX,**

Defendant - Appellee.

No. 08-30445

D.C. No. 3:96-CR-00080-JKS

**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.