## FOR PUBLICATION

## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Charles Franklin Murdoch, Jr., Petitioner-Appellant,

v.

ROY CASTRO, Warden; BILL LOCKYER, Attorney General, Attorney General of the State of California,

Respondents-Appellees.

No. 05-55665 D.C. No. CV-99-06900-RSWL ORDER

Filed October 9, 2008

## **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.

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