

**FILED**

JAN 04 2013

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

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**GREGORY DICKENS,**

Petitioner - Appellant,

v.

**CHARLES RYAN,**

Respondent - Appellee.

No. 08-99017

D.C. No. CV-01-757-PHX-NVW

**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 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.