

FILED

JUL 18 2011

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

FOR PUBLICATION
UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THOMAS PAUL WEST; GREGORY
DICKENS; CHARLES M. HEDLUND;
ROBERT W. MURRAY; THEODORE
WASHINGTON; TODD SMITH,

Plaintiffs - Appellants,

v.

JANICE K BREWER, Governor of
Arizona; CHARLES L. RYAN, Director,
Arizona Department of Corrections;
ERNEST TRUJILLO; CARSON
MCWILLIAMS, Warden, Arizona
Department of Corrections- Florence;
UNKNOWN PARTIES, named as Does 1-
50,

Defendants - Appellees.

No. 11-16707

D.C. No. 2:11-cv-01409-NVW
District of Arizona,
Phoenix

ORDER

Before: THOMAS, Circuit Judge and Capital Case Coordinator.

Pursuant to the rules applicable to capital cases in which an execution date has been scheduled, a deadline was established by which any judge could request a vote on whether the panel's order denying the Emergency Motion for a Temporary Restraining Order should be reheard en banc. No judge requested a vote on whether to rehear the panel's decision en banc within the time period

established. Therefore, the petition for rehearing en banc is denied and en banc proceedings are concluded with respect to the Emergency Motion for a Temporary Restraining Order.

The three-judge panel will issue a separate order concerning the petition for panel rehearing. Judges McKeown, Clifton, and Bea did not participate.

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West v. Brewer, No. 11-16707

Statement of REINHARDT, Circuit Judge:

This is a brief explanation of why I am not calling for rehearing en banc. I consider such a call futile in light of the recent decisions of this court in *Beaty v. Brewer*, No. 11–99007, 2011 WL 2040916 (9th Cir. May 25, 2011), *Cook v. Brewer*, No. 11–15743, 2011 WL 1213095 (9th Cir. April 1, 2011), and *Cook v. Brewer*, 637 F.3d 1002 (9th Cir. 2011), decisions I believe to be clearly erroneous, as well as the Supreme Court’s decision in *Baze v. Rees*, 553 U.S. 35 (2008), a case on which it would be injudicious for me to comment. Thus, while I believe that West’s execution will violate the Constitution, I can play no further role in seeking to protect his constitutional rights.