

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

**FILED**

FEB 25 2013

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

**JOSHUA JAMES FROST,**

Petitioner - Appellant,

v.

**RON VAN BOENING, Superintendent,**

Respondent - Appellee.

No. 11-35114

D.C. No. 2:09-cv-00725-TSZ

**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.