

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

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|------------------------------------------------------------------------------------------------------------------------------|---|
| SCOTT LYNN PINHOLSTER,<br><i>Petitioner-Appellee,</i><br>v.<br>ROBERT L. AYERS, Jr., Warden,<br><i>Respondent-Appellant.</i> | } |
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No. 03-99003  
D.C. No.  
CV-95-06240-GLT

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| SCOTT LYNN PINHOLSTER,<br><i>Petitioner-Appellant,</i><br>v.<br>ROBERT L. AYERS, Jr., Warden,<br><i>Respondent-Appellee.</i> | } |
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No. 03-99008  
D.C. No.  
CV-95-06240-GLT  
ORDER

Filed March 20, 2009

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**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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