

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

JOSHUA RICHTER,  
*Petitioner-Appellant,*  
v.  
R. Q. HICKMAN, Warden; CAL A.  
TERHUNE; ERNIE ROE,  
*Respondents-Appellees.*

No. 06-15614  
D.C. No.  
CV-01-00643-JKS  
ORDER

Filed November 10, 2008

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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.

Judge Callahan did not participate in the deliberations or vote in this case.

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