

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

TIMOTHY LEE BYRD,  
*Petitioner-Appellant,*

v.

GAIL LEWIS, WARDEN, PLEASANT  
VALLEY STATE PRISON; EDMUND G.  
BROWN, ATTORNEY  
GENERAL FOR THE STATE OF  
CALIFORNIA,  
*Respondents-Appellees.*

No. 06-15977

D.C. No.  
CV-02-02013-MCE  
Eastern District of  
California,  
Sacramento

ORDER

Filed May 15, 2009

Before: J. Clifford Wallace and Johnnie B. Rawlinson,  
Circuit Judges, and Jane A. Restani,\* Judge.

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**ORDER**

This case is resubmitted for decision on May 8, 2009. The accompanying majority and concurring opinions supersede the withdrawn majority and concurring/dissenting opinions filed on December 11, 2007 and published at 510 F.3d 1045. The pending petition for rehearing and suggestion for rehearing en banc are dismissed as moot. The parties may file petitions for rehearing and/or rehearing en banc of this superseding opinion in accordance with the Federal Rules of Appellate Procedure and the Rules of the United States Court of Appeals for the Ninth Circuit.

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\*The Honorable Jane A. Restani, Chief Judge, United States Court of International Trade, sitting by designation.

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