

FILED**FOR PUBLICATION**

MAR 12 2014

UNITED STATES COURT OF APPEALSMOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**FOR THE NINTH CIRCUIT****JAMES ERIN MCKINNEY,**

Petitioner - Appellant,

v.

CHARLES L. RYAN,

Respondent - Appellee.

No. 09-99018

D.C. No. 2:03-cv-00774-DGC

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.

Judges Silverman, Murguia and Hurwitz did not participate in the deliberations or vote in this case.