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U.S. COURT OF APPEALS

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TYRONE W. MILES,

Petitioner - Appellant,

v.

MICHAEL MARTEL, Warden,

Respondent - Appellee.

No. 10-15633

D.C. No. 1:08-cv-01002-JF  
Eastern District of California,  
Fresno

ORDER

Appeal from the United States District Court  
for the Eastern District of California  
Jeremy D. Fogel, District Judge, Presiding

Argued and Submitted February 15, 2012  
Submission Vacated February 21, 2012  
Resubmitted September 28, 2012  
San Francisco, California

Before: HUG, and PAEZ, Circuit Judges.

Having considered the parties' stipulation and joint motion to vacate the court's opinion in this case, the court orders the following:

1. The opinion filed on September 28, 2012 and reported at 696 F.3d 889 is withdrawn.
2. This case is ordered remanded to the district court with directions to enter judgment granting a writ of habeas corpus directing that Petitioner Miles be released from custody as soon as possible and no later than 48 hours after entry of the district court's judgment.

3. The filing of this order shall serve as the court's mandate.

IT IS SO ORDERED.

## **COUNSEL**

Michael S. Romano (argued), Mills Legal Clinic, Stanford, CA for petitioner-appellant.

David Eldridge (argued), Office of the California Attorney General, Sacramento, CA for respondents-appellees.