

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

JEFFREY J. BIGGS,  
*Petitioner-Appellant,*

v.

SECRETARY OF THE  
CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION,  
*Respondent-Appellee.*

No. 11-18021

D.C. No.  
2:07-cv-00470-WBS-CKD

ORDER AMENDING  
OPINION AND  
DENYING PETITION  
FOR PANEL  
REHEARING AND  
PETITION FOR  
REHEARING EN BANC

Filed September 4, 2013

Before: J. Clifford Wallace, Jerome Farris,  
and Jay S. Bybee, Circuit Judges.

---

**ORDER**

The opinion, filed May 29, 2013, appearing at 717 F.3d 678 (9th Cir. 2013), is amended as follows:

1. At 717 F.3d at 689, lines 47–50, replace, “To the extent the *Garner* opinion includes language that can be interpreted as being relevant to the scope of applicability of

2 BIGGS V. SEC'Y OF CAL. DEP'T OF CORR. & REHAB.

the as-applied requirement, that language suggests a limited scope.” with, “*Garner*’s language regarding the as-applied requirement is limited in scope.”

2. At 717 F.3d at 691, lines 61–62, replace “we only considered that test facially.” with, “we did not have to reach the as-applied challenge because we found the law facially invalid.”

3. At 717 F.3d at 692, lines 3–5, replace “if such a holding existed, could be—and should be—distinguished with regard to the change in law at issue here.” with, “can—and should—be distinguished with regard to the change in law at issue here.”

4. At 717 F.3d at 692, lines 8–9, replace “in Biggs’ case or otherwise.” with, “in Biggs’ case.”

5. 717 F.3d at 692, lines 61–64, replace “Thus, because none of our cases discussing *Garner* hold that as-applied analysis is required by clearly established federal law, we have no reason not to follow *Johnson*.” with, “Thus, because none of our cases discussing *Garner* holds that clearly established federal law requires as-applied analysis, we have no reason not to follow *Johnson*.”

With these amendments, the panel judges have voted to deny appellant’s petition for panel rehearing. Judge Bybee voted to deny the petition for rehearing en banc, and Judges Wallace and Farris recommended denying the petition for rehearing en banc.

BIGGS V. SEC'Y OF CAL. DEP'T OF CORR. & REHAB. 3

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellant's petition for rehearing and petition for rehearing en banc, filed July 12, 2013, is **DENIED**. The panel will not entertain future petitions for rehearing.