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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

VICTOR BENITEZ,

1:06-cv-000142 LJO SMS HC

Petitioner,

ORDER VACATING FINDINGS AND  
RECOMMENDATION IN LIGHT OF EN  
BANC REVIEW GRANTED IN HAYWARD  
V. MARSHALL, 412 F.3d 536 (9<sup>th</sup> Cir. 2008)

v.

SCOTT P. RAWERS, Warden,

[Doc. 25]

Respondent.

\_\_\_\_\_  
Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On April 22, 2008, the undersigned issued Findings and Recommendation to grant the instant petition for writ of habeas corpus reversing the Governor’s 2003 decision finding that Petitioner was not suitable for release on parole. (Court Doc. 24.)

The Findings and Recommendation cited and analyzed the Ninth Circuit Court of Appeals then-recent decision in Hayward v. Marshall, 512 F.3d 536 (9<sup>th</sup> Cir. 2008). Almost one month after the Findings and Recommendation was issued, the Ninth Circuit granted en banc review in Hayward on May 16, 2008, \_\_\_ F.3d \_\_\_, No. 06-55392.

On May 21, 2008, Respondent filed a motion to vacate the Findings and Recommendation in light of the Ninth Circuit’s en banc review of Hayward. (Court Doc. 25.) Respondent is correct that the Hayward decision can no longer be cited as precedent within this Circuit, and the Findings and Recommendations will be vacated and re-issued in due course.

1           Based on the foregoing, it is HEREBY ORDERED that the Findings and  
2 Recommendation issued April 22, 2008, is VACATED.

3  
4 IT IS SO ORDERED.

5 **Dated: January 25, 2010**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

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