

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—San Francisco, California
Submission Vacated February 21, 2012
Resubmitted September 28, 2012

Filed November 21, 2012

Before: Proctor Hug, and Richard A. Paez, Circuit Judges.

COUNSEL

Michael S. Romano (argued), Mills Legal Clinic, Stanford, California for Petitioner-Appellant.

David Eldridge (argued), Office of the California Attorney General, Sacramento, California for Respondent-Appellee.

ORDER

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 The opinion filed on September 28, 2012 and reported at 696 F.3d 889 is withdrawn.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.