

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

MICHAEL RAY LOUNSBURY, <i>Petitioner-Appellant,</i> v. FRANK S. THOMPSON, <i>Respondent-Appellee.</i>
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No. 02-35863  
D.C. No.  
CV-99-01135-MRH/  
JPC  
ORDER

Filed June 29, 2004

Before: Alfred T. Goodwin, Procter Hug, Jr., and  
Marsha S. Berzon, Circuit Judges.

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**ORDER**

A judge of this court sua sponte called for en banc reconsideration. The call failed to receive a majority vote of the active, non-recused judges.

The opinion filed August 22, 2003, slip op. 11905, and appearing at 340 F.3d 998 (9th Cir. 2003), is withdrawn. It may not be cited as precedent by or to this court or any district court of the Ninth Circuit. A new opinion shall be filed.

The parties are instructed that no further filings will be accepted in this case. The mandate shall issue forthwith.

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