STATUS OF PENDING EN BANC CASES
Today's Date: January 3, 2012

This report is provided for case identification and background information only and does not reflect the views of the court. When a case is heard or reheard en banc, the en banc court assumes jurisdiction over the entire case, see 28 U.S.C. § 46(c), regardless of the issue or issues that may have caused any member of the Court to vote to hear the case en banc. Summerlin v. Stewart, 309 F.3d 1193 (9th Cir. 2002)

Sessoms v. Runnels, 08-17790
Three-Judge Panel Opinion: 650 F.3d 1276 (9th Cir. 2011)
Order Taking Case En Banc: 2011 WL 6287971 (9th Cir. December 15, 2011)
Date of Order Taking Case En Banc: December 15, 2011
Status: To be calendared the week of March 19, 2012, in San Francisco, California
Members of En Banc Court: Not yet available
Subject Matter: Appeal of district court's denial of habeas corpus petition challenging a felony murder conviction.
Holding: Not yet decided

Nordyke v. King, 07-15763
Three-Judge Panel Opinion: 644 F.3d 776 (9th Cir. 2011)
Order Taking Case En Banc: 2011 WL 5928130 (9th Cir. November 28, 2011)
Date of Order Taking Case En Banc: November 28, 2011
Status: To be calendared the week of March 19, 2012, in San Francisco, California
Members of En Banc Court: Not yet available
Subject Matter: Following remand by this court, appeal by gun show sponsors of the district court's summary judgment in 42 U.S.C. § 1983 action challenging Alameda County ordinance banning possession of firearms on County property.
Holding: Not yet decided

Veterans for Common Sense v. Shinseki, 08-16728
Three-Judge Panel Opinion: 644 F.3d 845 (9th Cir. 2011)
Order Taking Case En Banc: 2011 WL 5574937 (9th Cir. November 16, 2011)
Date of Order Taking Case En Banc: November 16, 2011
Status: Argued and submitted December 13, 2011
Members of En Banc Court: Kozinski, Schroeder, Thomas, Graber, McKeown, Wardlaw, Rawlinson, Bybee, Callahan, Ikuta, N. Smith
Subject Matter: Appeal by veterans organizations of the district court's judgment in favor of the Department of Veterans Affairs in the veterans' action challenging the agency's administration of benefits and medical care.
Holding: Not yet decided

Lacey v. Maricopa County, 09–15703 / 09–15806
Three-Judge Panel Opinion: 649 F.3d 1118 (9th Cir. 2011)
Order Taking Case En Banc: 2011 WL 5506073 (9th Cir. November 10, 2011)
Date of Order Taking Case En Banc: November 10, 2011
Status: Argued and submitted December 14, 2011

Members of En Banc Court: Kozinski, Schroeder, Pregerson, Reinhardt, W. Fletcher, Fisher, Tallman, Rawlinson, Bybee, Bea, Ikuta
Subject Matter: Cross-appeals in 42 U.S.C. § 1983 action brought by the Phoenix New Times newspaper, its writers, and its editor, alleging that defendants Sheriff Joseph Arpaio and the County Prosecutor and Special Prosecutor retaliated against them for publishing stories critical of defendants.
Holding: Not yet decided

Movsesian, et al v. Versicherung AG, 07-56722
Three-Judge Panel Opinion: 629 F.3d 901 (9th Cir. 2010)
Order Taking Case En Banc: 2011 WL 5336269 (9th Cir. November 7, 2011)
Date of Order Taking Case En Banc: November 7, 2011
Status: Argued and submitted December 14, 2011
Members of En Banc Court: Kozinski, Schroeder, Reinhardt, Thomas, Silverman, Graber, McKeown, Fisher, Paez, Rawlinson, Ilkuta
Subject Matter: Appeal of district court's order granting in part and denying in part insurer's motion to dismiss complaint by plaintiff class alleging breach of contract and other claims arising from insurance policies issued to Armenian Genocide victims.
Holding: Not yet decided

Beeman v. Anthem Prescription, 07-56692+
Three-Judge Panel Opinion: 652 F.3d 1085 (9th Cir. 2011)
Order Taking Case En Banc: 661 F.3d 1199 (9th Cir. 2011)
Date of Order Taking Case En Banc: October 31, 2011
Status: Not yet calendared.
Members of En Banc Court: Not yet available
Subject Matter: Appeal by defendants, pharmacy benefit managers, in action brought by plaintiffs, independent retail pharmacies, to enforce California Civil Code §§ 2527 and 2528.
Holding: Not yet decided

United States v. Nosal, 10-10038
Three-Judge Panel Opinion: 642 F.3d 781 (9th Cir. 2011)
Order Taking Case En Banc: 661 F.3d 1180 (9th Cir. 2011)
Date of Order Taking Case En Banc: October 27, 2011
Status: Argued and submitted December 15, 2011
Members of En Banc Court: Kozinski, Pregerson, Silverman, McKeown, Wardlaw, Gould, Paez, Tallman, Clifton, Bybee, Murguia
Subject Matter: Appeal by the United States of the district court's order dismissing counts of an indictment charging an employee with exceeding authorized access to a protected computer, in violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(4).
Holding: Not yet decided

Karuk Tribe of California v. United States Forest Service, 05-16801
Three-Judge Panel Opinion: 640 F.3d 979 (9th Cir. 2011)
Order Taking Case En Banc: 658 F.3d 953 (9th Cir. 2011

Date of Order Taking Case En Banc: September 12, 2011
Status: Argued and submitted December 13, 2011
Members of En Banc Court: Kozinski, Silverman, Graber, Wardlaw, W. Fletcher, Gould, Paez, Berzon, M. Smith, Ikuta, Murguia
Subject Matter: Appeal by the Karuk Tribe of California of the district court's judgment in favor of the United States Forest Service in the Tribe's action challenging mining operations in the Klamath National Forest.
Holding: Not yet decided

United States v. Milovanovic, 08-30381
Three-Judge Panel Opinion: 627 F.3d 405 (9th Cir. 2010)
Order Taking Case En Banc: 655 F.3d 1106 (9th Cir. 2011)
Date of Order Taking Case En Banc: August 24, 2011
Status: Argued and submitted December 12, 2011.
Members of En Banc Court: Kozinski, Graber, Wardlaw, Gould, Paez, Tallman, Rawlinson, Clifton, Bea, M. Smith, Murguia
Subject Matter: Appeal by the United States of the district court's dismissal of an indictment before trial for honest services mail fraud.
Holding: Not yet decided

Young v. Holder, 07-70949
Three-Judge Panel Opinion: 634 F.3d 1014 (9th Cir. 2011)
Order Taking Case En Banc: 653 F.3d 897 (9th Cir. 2011)
Date of Order Taking Case En Banc: July 29, 2011
Status: Argued and submitted December 12, 2011. Supplemental briefing ordered 12/16/11.
Members of En Banc Court: Kozinski, Schroeder, B. Fletcher, Pregerson, Kleinfeld, Graber, Fisher, Paez, Clifton, Bea, Ikuta
Subject Matter: Petition for review from the Board of Immigration Appeals' decision finding petitioner removable based on his conviction for violating California Health & Safety Code § 11352(a).
Holding: Not yet decided

United States v. Ressam, 09-30000
Three-Judge Panel Opinion: 593 F.3d 1095 (9th Cir. 2010)
Order Taking Case En Banc: 653 F.3d 963 (9th Cir. 2011)
Date of Order Taking Case En Banc: August 2, 2011
Status: Argued and submitted September 21, 2011
Members of En Banc Court: Kozinski, Schroeder, Reinhardt, Graber, McKeown, Wardlaw, Paez, Berzon, Clifton, Bybee, Murguia
Subject Matter: Appeal by the United States of the sentence imposed on Ahmed Ressam, for his conviction on multiple charges relating to his attempt to smuggle explosives into the United States in connection with a terrorist plot.
Holding: Not yet decided

Native Village of Eyak v. Locke, 09-35881

Prior En Banc Court Order: *Eyak Native Village v. Daley*, 02-36155, 375 F.3d 1218 (9th Cir. 2004) (en banc)
Order Taking Case En Banc: 2011 WL (9th Cir. June 21, 2011)
Date of Order Taking Case En Banc: June 21, 2011
Status: Argued and submitted September 21, 2011
Members of En Banc Court: Kozinski, Schroeder, Pregerson, Kleinfeld, Hawkins, Thomas, W. Fletcher, Paez, Tallman, Rawlinson, Clifton
Subject Matter: Appeal by Native Villages on remand from this court in prior en banc appeal, from district court's judgment in favor of the Secretary of Commerce in plaintiffs' action challenging fishing regulations and alleging nonexclusive aboriginal hunting and fishing rights in the Outer Continental Shelf off the southern coast of Alaska.
Holding: Not yet decided

Price v. Stevedoring Services of America, 08-71719
Three-Judge Panel Opinion: 627 F.3d 1145 (9th Cir. 2010)
Order Taking Case En Banc: 653 F.3d 928 (9th Cir. 2011)
Date of Order Taking Case En Banc: August 1, 2011
Status: Argued and submitted September 22, 2011, submission vacated September 29, 2011, pending the Supreme Court's decision in *Roberts v. Sea-Land Services, Inc.*, No. 10-1399, cert. granted, 2011 WL 1831577 (U.S. Sept. 27, 2011).
Members of En Banc Court: Kozinski, Schroeder, Reinhardt, O'Scannlain, Thomas, Silverman, W. Fletcher, Gould, Berzon, Bea, Murguia
Subject Matter: Petition for review from a decision of the Benefits Review Board determining petitioner's average weekly wage and maximum compensation rate.
Holding: Not yet decided

United States v. Havelock, 08-10472
Three-Judge Panel Opinion: 619 F.3d 1091 (9th Cir. 2010)
Order Taking Case En Banc: 645 F.3d 1083 (9th Cir. 2011)
Date of Order Taking Case En Banc: May 9, 2011
En Banc Opinion: 2012 WL (9th Cir. January 6, 2012)
Date of En Banc Opinion: January 6, 2012
Status: Reversed six convictions for mailing threatening communications, in violation of 18 U.S.C. § 876.
Members of En Banc Court: Kozinski, Schroeder, B. Fletcher, Reinhardt, Wardlaw, Fisher, Berzon, Rawlinson, Callahan, Ikuta, N.R. Smith
Subject Matter: Appeal by criminal defendant convicted of mailing threatening communications to press organizations.
Holding: The en banc court held that 18 U.S.C. § 876(c) refers exclusively to an individual, or to a natural, person, and that the statute therefore requires that the threatening communications be addressed to a natural person. The en banc court also held that to identify the addressee, a court is not limited to the directions for delivery on the outside of the envelope or packaging, but may also look to the content of the communication.

Gonzalez v. State of Arizona, 08-17094

Three-Judge Panel Opinion: 624 F.3d 1162 (9th Cir. 2010)
Order Taking Case En Banc: 649 F.3d 953 (9th Cir. 2011)
Date of Order Taking Case En Banc: April 27, 2011
Status: Argued and submitted June 21, 2011
Members of En Banc Court: Kozinski, Pregerson, Rymer, Graber, Berzon, Rawlinson, Clifton, Bybee, Ikuta, N.R. Smith, Murguia
Subject Matter: Appeal by Arizona residents and Indian tribes in consolidated actions challenging validity of state Taxpayer and Citizen Protection Act, requiring proof of citizenship to register to vote and proof of identification to vote in person at polls.
Holding: Not yet decided

United States v. Leal-Felix, 09-50426
Three-Judge Panel Opinion: 625 F.3d 1148 (9th Cir. 2010)
Order Taking Case En Banc: 641 F.3d 1141 (9th Cir. 2011)
Date of Order Taking Case En Banc: April 19, 2011
En Banc Opinion: 2011 WL 5966202 (9th Cir. November 30, 2011)
Date of En Banc Opinion: November 30, 2011
Status: Vacated the district court's sentence and remanded for resentencing. Mandate issued December 22, 2011.
Members of En Banc Court: Kozinski, Schroeder, Graber, McKeown, Wardlaw, W. Fletcher, Paez, Rawlinson, M. Smith, Ikuta, N.R. Smith
Subject Matter: Appeal by criminal defendant that a citation for a traffic violation is an arrest countable for criminal history under the Sentencing Guidelines.
Holding: The term "arrest" in U.S.S.G. § 4A1.2(a)(2) requires that the individual be formally arrested; the mere issuance of a citation, even if considered an arrest under state law, is insufficient. The district court's treatment of the first of two citations for driving with a suspended license as an intervening arrest, and the resulting separate criminal-history counting of the two citations, was improper.

Garcia v. Benov, 09-56999
Three-Judge Panel Opinion: Unpublished memorandum disposition: 395 Fed.Appx. 329 (9th Cir. 2010)
Order Taking Case En Banc: 636 F.3d 1174 (9th Cir. 2011)
Date of Order Taking Case En Banc: February 28, 2011
Status: Argued and submitted June 23, 2011
Members of En Banc Court: Kozinski, Pregerson, Thomas, Graber, Wardlaw, W. Fletcher, Berzon, Tallman, Clifton, M. Smith, Ikuta
Subject Matter: Appeal by an alien from the district court's denial of his petition for writ of habeas corpus challenging the Secretary of State's extradition decision.
Holding: Not yet decided

Comite de Jornaleros v. City of Redondo, 06-55750
Three-Judge Panel Opinion: 607 F.3d 1178 (9th Cir. 2010)
Order Taking Case En Banc: 623 F.3d 1054 (9th Cir. 2010)
Date of Order Taking Case En Banc: October 15, 2010
En Banc Opinion: 657 F.3d 936 (9th Cir. 2011)

Date of En Banc Opinion: September 16, 2011
Status: Affirmed the district court's summary judgment
Members of En Banc Court: Kozinski, Thomas, Graber, Gould, Berzon, Bybee, Callahan, Bea, M. Smith, Ikuta, N.R. Smith
Subject Matter: Appeal of district court's summary judgment in day laborers' First Amendment challenge to ordinance prohibiting solicitation of business on streets and highways.
Holding: The ordinance is a facially unconstitutional restriction on speech which failed to satisfy the narrow tailoring element of the Supreme Court's "time, place, and manner" test. Solicitation of business or employment constitutes protected expression under the First Amendment.

Harrison v. Gillespie, 08-16602
Three-Judge Panel Opinion: 596 F.3d 551 (9th Cir. 2010)
Order Taking Case En Banc: 608 F.3d 1117 (9th Cir. 2010)
Date of Order Taking Case En Banc: June 18, 2010
Status: Affirmed district court's denial of 28 U.S.C. § 2254 habeas corpus petition. On May 10, 2011, the en banc court denied a petition for rehearing and filed an amended en banc opinion and dissent by Judge Reinhardt.
En Banc Opinion: 636 F.3d 472 (9th Cir. 2011)
Amended En Banc Opinion: 640 F.3d 888 (9th Cir. 2011)
Date of En Banc Opinion: February 15, 2011
Date of Amended En Banc Opinion: May 10, 2011
Members of En Banc Court: Kozinski, Reinhardt, Thomas, Graber, McKeown, Wardlaw, W. Fletcher, Fisher, Berzon, Clifton, M. Smith
Subject Matter: Appeal of district court's denial of habeas corpus petition seeking to strike the death penalty, where jury deadlocked at the penalty phase following conviction for murder.
Holding: Capital defendants do not have a per se constitutional right to inquire about the possibility that a penalty-phase jury has reached a preliminary decision against imposing the death penalty. The trial judge did not abuse discretion or subject petitioner to double jeopardy by declining to poll the jury before discharging it, and the State was not precluded from seeking the death penalty at the retrial of the penalty phase. In the amended opinion, the en banc court deleted language that recognized Nevada state law permitting certain defendants to bifurcate the capital sentencing into distinct phases.

Sarei v. Rio Tinto, PLC, 02-56256 / 02-56390
Three-Judge Panel Opinion: 487 F.3d 1193 (9th Cir. 2007)
Order Taking Case En Banc: 499 F.3d 923 (9th Cir. 2007)
Date of Order Taking Case En Banc: August 20, 2007
En Banc Opinion: 550 F.3d 822 (9th Cir. 2008); 2011 WL 5041927 (9th Cir. October 26, 2011)
Date of En Banc Opinion: December 16, 2008; October 26, 2011
Status: Affirmed in part and reversed in part the district court's judgment in an Alien Tort Statute case arising out of the operations of Rio Tinto mining group on the island of Bougainville in Papua New Guinea and the uprising against Rio Tinto in the late 1980's.

The en banc court affirmed the district court's order on prudential exhaustion and its dismissal of claims of racial discrimination and crimes against humanity, and reversed the dismissal of claims for genocide and war crimes and remanded for further proceedings on these claims.

Members of En Banc Court: Schroeder, Pregerson, Reinhardt, Kleinfeld, Silverman, McKeown, Berzon, Rawlinson, Callahan, Bea, Ikuta

Subject Matter: Appeal of the district court's dismissal of a class action complaint brought by current and former residents of the island of Bougainville in Papua New Guinea against a mining company under the Alien Tort Claims Act.

Holding: Plaintiffs' claims of genocide and war crimes fell within the limited federal jurisdiction created by the ATS, and their claims of crimes against humanity arising from a blockade and racial discrimination did not. The complaint adequately alleged genocide and war crimes claims.