

**General Docket**  
**United States Court of Appeals for the Ninth Circuit**

<b>Court of Appeals Docket #:</b> 03-16042 <b>Nature of Suit:</b> 3550 Prisoner-Civil Rights Ngo, et al v. Woodford, et al <b>Appeal From:</b> U.S. District Court for Northern California, San Jose <b>Fee Status:</b> Partially Paid	<b>Docketed:</b> 06/04/2003 <b>Termed:</b> 08/21/2008
<b>Case Type Information:</b> 1) prisoner 2) state 3) civil rights	
<b>Originating Court Information:</b> <b>District:</b> 0971-5 : <a href="#">CV-01-20674-JF</a> <b>Trial Judge:</b> Jeremy D. Fogel, District Judge <b>Date Filed:</b> 07/18/2001 <b>Date Order/Judgment:</b> 05/06/2003	
<b>Date NOA Filed:</b> 05/29/2003	
<b>Prior Cases:</b> None	
<b>Current Cases:</b> None	

VIET MIKE NGO (-: E-21895) Plaintiff - Appellant,	Meir Feder Direct: 212-326-7870 [COR LD NTC Pro Bono Appointment] Jones Day 250 Vesey Street New York, NY 10281-1047  Viet Mike Ngo [LD NTC Pro Se] CTF - CORRECTIONAL TRAINING FACILITY (SOLEDAD) Facility C P.O. Box 689 Soledad, CA 93960
v.	
A. P. KANE Defendant - Appellee,	Kenneth T. Roost, Esquire [COR LD NTC Dep State Atty Gen] AGCA - Office of the California Attorney General 455 Golden Gate Avenue San Francisco, CA 94102
J S WOODFORD Defendant - Appellee,	Kenneth T. Roost, Esquire [COR LD Dep State Atty Gen] (see above)

VIET MIKE NGO,

Plaintiff - Appellant

v.

J S WOODFORD, Warden; A.P. KANE; Chief Deputy

Defendants - Appellees

- 06/04/2003  1 DOCKETED CAUSE AND ENTERED APPEARANCE OF APPELLANT IN PRO PER AND COUNSEL FOR APPELLEES. CADS SENT (Y/N): No. setting schedule as follows: appellant's opening brief is due 7/14/03; appellees' brief is due 8/13/03; appellants' reply brief is due 8/27/03. [03-16042] (RT) [Entered: 06/04/2003 11:38 AM]
- 06/04/2003  3 Filed Appellant Viet Mike Ngo's motion to proceed in forma pauperis on appeal, served on 5/22/03 (note: motion to proceed ifp is a part of appellant's notice of appeal - on the same page) (to PRO SE) [03-16042] (RT) [Entered: 06/04/2003 11:41 AM]
- 07/02/2003  5 Received letter dated 6/29/03 from pro se re: requests copy of Ct's Rules. [Rules sent] (GV) [Entered: 07/03/2003 09:58 AM]
- 07/07/2003  6 Received Appellant Viet Mike Ngo's motion to extend time to file appellant's opening brief until 8/13/03; served on 7/1/03 [4785820] (MOATT) [03-16042] (XX) [Entered: 07/10/2003 01:52 PM]
- 07/14/2003  8 Filed order (Appellate Commissioner) granting appellant's motion to proceed in forma pauperis [3] Pursuant to 28 USC 1915(b)(1)&(2), however, aplt eventually must pay the full amount of the fees for this appeal. Consequently, within 21 days of the filing date of this order, aplt shall complete & file with this court the enclosed authorization form, which directs the prison officials at aplt's institution to assess, collect, and forward to the court the \$105 fees for this appeal on a monthly basis whenever funds exist in aplt's trust fund acct. These fees will continue to be collected regardless of the date or manner of disposition of this appeal. If aplt fails to comply with this order, the clerk shall dismiss this appeal for failure to prosecute. 42-1. If aplt complies with this order, appellants' opening brief, excerpts due 8/13/03; appellees' brief due 9/12/03; the reply brief will be due within 14 days after serv of the answering brief. Because aplt is a prisoner proceeding ifp and is not represented by csl, aplt is not required to file excerpts of record. (MOATT) [03-16042] (XX) [Entered: 07/14/2003 07:59 AM]
- 07/24/2003  9 Rec'd PLRA authorization response from appellant. (PROSE) ( Date: 7/19/03) [03-16042] (XX) [Entered: 07/25/2003 03:07 PM]
- 08/05/2003  12 Filed order MOATT ( CD) Aplt has been granted leave to proceed ifp in this appeal and has completed and filed the required authorization form directing the prison officials to assess, collect, and forward to the DC the fees for this appeal pursuant to 28 USC 1915(b)(1) & (2). This court hereby assesses and initial filing fee of 20%.....The clerk shall serve this order & aplt's completed authorization form on the Atty Gen in Sac, CA, who shall notify the agency or prison.....Each payment should be accompanied by the DC & appellate #.....The clerk shall also serve a copy of this order on the clerk & the financial unit of the DC. The briefing schedule established previously shall remain in effect. [03-16042] (XX) [Entered: 08/05/2003 08:38 AM]
- 08/15/2003  13 Filed original and 7 copies Appellant Viet Mike Ngo opening brief ( Informal: yes) 7 pages; served on 8/13/03 [03-16042] (XX) [Entered: 08/15/2003 04:57 PM]
- 09/05/2003  14 Filed original and 15 copies appellee J. S. Woodford, A. P. Kane's 6 pages brief, 5 copies Exc. 1 vol ; served on 9/5/03 [03-16042] (JI) [Entered: 09/08/2003 12:13 PM]
- 09/17/2003  17 Calendar check performed [03-16042] (TH) [Entered: 09/17/2003 09:50 AM]
- 09/22/2003  19 FILED CERTIFIED RECORD ON APPEAL: 1 CLERK'S RECORD.(ORIGINAL) [03-16042] (SD) [Entered: 09/22/2003 01:28 PM]
- 11/10/2003  20 SUBMITTED TO SCREENING PANEL 363. ( Oral) [03-16042] [03-16042] (TH) [Entered: 11/10/2003 11:26 AM]
- 12/01/2003  22 Filed order (PROSE: jmr) Upon review of the record and the briefing in this appeal, this court has determined that the appointment of pro bono csl in this appeal would benefit the court's review. The court by this order expresses no opinion as to the merits of this appeal. The clerk shall enter an order appointing pro bono csl to represent appellant for purposes of this appeal only. Pro bono csl shall prepare supp briefing that will be submitted, along with appellant's brief, to the judges deciding this appeal and shall appear at oral argument. The clerk shall establish a supp briefing schedule. The appeal is stayed pending further order. If aplt objects to the court's appt of csl in this appeal, aplt shall file a written objection within 14 days from the date of entry of this order. [03-16042] (XX) [Entered: 12/01/2003 09:16 AM]
- 12/02/2003  24 Rec'd notice of change of address from Appellant Viet Mike Ngo dated 11/30/03. (new add: P.O. Box689, Soledad, CA 93960) [03-16042] (XX) [Entered: 12/02/2003 05:25 PM]
- 12/17/2003  25 Filed order (Deputy Clerk/Pro Se: jmr) Pursuant to this court's order appointing pro bono counsel for appellant, Meir Feder, Esq. is hereby appointed to represent appellant in this appeal. If appellant does not object to this order in writing within 14 days from the date of entry of this order, the Clerk shall amend the docket to reflect that Meir Feder, Esq. Jones Day, 51 Louisiana Avenue, Washington DC, 20001, (202) 879-3829, are counsel of record for appellant in this appeal. This order shall be served on appellant as well as on counsel for appellant. Supplemental briefing shall proceed as follows: appellant's supplemental opening brief is due February 27, 2004; appellee's supplemental answering brief is due March 29, 2004; and appellant's optional supplemental reply brief is due April 12, 2004. This appeal shall be calendared for

- oral argument in San Francisco, California on the next available calendar. [03-16042] (RT) [Entered: 12/17/2003 02:39 PM]
- 02/18/2004  27 14 day oral extension by phone of time to file Appellant brief. [03-16042] appellants' brief due 3/12/04; appellees' brief due 4/12/04, ; appellants' reply brief due 4/26/04; (JR) [Entered: 02/18/2004 12:12 PM]
- 03/12/2004  28 Filed original and 15 copies Appellant Viet Mike Ngo supplemental brief of 17 pages, served on 3/11/04 [03-16042] (XX) [Entered: 03/12/2004 01:17 PM]
- 04/12/2004  29 Filed original and 15 copies Appellees' supplemental brief of 15 pages, served on 4/12/04 [03-16042] (XX) [Entered: 04/12/2004 04:48 PM]
- 04/26/2004  30 Filed original and 15 copies Appellant Viet Mike Ngo supplemental reply brief of 18 pages, served on 4/26/04 [03-16042] (CW) [Entered: 04/29/2004 09:57 AM]
- 05/20/2004  31 Calendar check performed [03-16042] (MW) [Entered: 05/20/2004 11:15 AM]
- 06/08/2004  32 Calendar materials being prepared. [03-16042] [03-16042] (MW) [Entered: 06/08/2004 10:06 AM]
- 06/15/2004  33 CALENDARED: San Fran August 13, 2004 9:00 AM Courtroom 1 [03-16042] (RG) [Entered: 06/15/2004 09:19 AM]
- 07/13/2004  34 CJA travel authorization sent ( Authorization # 9CJA03-160420804 (pro bono)) to Meir Feder for Appellant Viet Mike Ngo . [03-16042] (AC) [Entered: 07/13/2004 05:09 PM]
- 08/09/2004  35 Filed Viet Mike Ngo additional citations, served on 8/5/04 (PANEL IN SF) [03-16042] (XX) [Entered: 08/09/2004 03:25 PM]
- 08/12/2004  36 Filed Viet Mike Ngo additional citations, served on 8/12/04 (PANEL in SF) [03-16042] (XX) [Entered: 08/13/2004 08:33 AM]
- 08/13/2004  37 ARGUED AND SUBMITTED TO Harry PREGERSON, Alex KOZINSKI, John S. Rhoades [03-16042] (RT) [Entered: 08/13/2004 03:21 PM]
- 08/20/2004  39 Rec'd notice of change of address from Meir Feder for Appellant Viet Mike Ngo dated 8/17/04. (new address: JONES DAY, 222 East 41st St., New York, NY 10017) [03-16042] (XX) [Entered: 08/24/2004 09:19 AM]
- 09/15/2004  41 GTA bill reconciled ( Paid (Pro Bono)) for Meir Feder for Appellant Viet Mike Ngo . Authorization #: 9CJA03-160420804 [03-16042] (AC) [Entered: 09/15/2004 02:10 PM]
- 09/21/2004  42 CJA 21 travel voucher processed AAF. ( CJA 21 #: 092004) for Meir Feder for Appellant Viet Mike Ngo . [03-16042] (MV) [Entered: 09/21/2004 01:13 PM]
- 03/24/2005  46 FILED OPINION: REVERSED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Harry PREGERSON, author; Alex KOZINSKI; John S. Rhoades. ) AND ENTERED JUDGMENT. [03-16042] (Walker, Synitha) [Entered: 03/24/2005 11:25 AM]
- 03/28/2005  48 Filed motion and deputy clerk order: (Deputy Clerk: sf) Granting motion to extend time to file a petition for rehearing due 4/14/05. (Motion recvd 3/28/05) [03-16042] (Walker, Synitha) [Entered: 04/01/2005 03:27 PM]
- 04/14/2005  49 Filed original and 50 copies Appellee Jeanne S. Woodford, Appellee A. P. Kane petition for panel rehearing and petition for rehearing en banc. (PANEL AND ALL ACTIVE JUDGES) 15 p.pages, served on 4/14/05 [03-16042] (Walker, Synitha) [Entered: 04/15/2005 02:31 PM]
- 04/25/2005  50 Filed order (Harry PREGERSON, Alex KOZINSKI, John S. Rhoades): Plaintiff-Appellant shall file a response to Defendants- Appellees petition for rehearing and rehearing en banc. Fifty (50) copies of said response shall be filed within twenty-one (21) days of the filed date of this order. [03-16042] (Walker, Synitha) [Entered: 04/25/2005 12:51 PM]
- 05/16/2005  52 Filed Appellant Viet Mike Ngo's response to petition opposing petition for enbanc rehearing. served 5/16/05 (PANEL AND ALL ACTIVE JUDGES AND ANY INTERESTED SENIOR JUDGES) [03-16042] (Walker, Synitha) [Entered: 05/16/2005 04:02 PM]
- 07/01/2005  56 Filed order (Harry PREGERSON, Alex KOZINSKI, John S. Rhoades): (SEE TEXT) The petition for rehearing is denied and the suggestion for rehearing en banc is rejected. [03-16042] (Walker, Synitha) [Entered: 07/01/2005 12:18 PM]
- 07/14/2005  58 Received letter from pro se re: partial bill of cost. Appt request reimbursement of filing fee for noa. (NO REIMBRSEMENT PER FRAP RULE 39(e)(4). (Walker, Synitha) [Entered: 08/16/2005 01:00 PM]
- 07/20/2005  57 MANDATE ISSUED [03-16042] (Walker, Synitha) [Entered: 07/20/2005 01:07 PM]
- 10/06/2005  59 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 05-416 filed on 10/3/05. [03-16042] (Walker, Synitha) [Entered: 10/14/2005 12:04 PM]

- 11/21/2005  60 Filed Supreme Court order, certiorari denied on 11/14/05. Supreme Court No. 05-416 [03-16042] (Walker, Synitha) [Entered: 11/22/2005 03:51 PM]
- 11/21/2005  62 Received notice from Supreme Court, petition for certiorari GRANTED on 11/14/05. Supreme Court No. 05-416 (PANEL) (Walker, Synitha) [Entered: 02/07/2006 09:44 AM]
- 02/07/2006  63 ONE VOLUME RECORD OF PROCEEDINGS HAD IN THE NINTH CIRCUIT TRANSMITTED TO THE U.S. SUPREME COURT IN S.C. CASE #05-416. THE DISTRICT COURT WILL FORWARD THE LOWER COURT RECORD DIRECTLY TO THE SUPREME COURT. [03-16042] (Sefarian, Steve) [Entered: 02/07/2006 10:28 AM]
- 06/27/2006  64 Received copy of Supreme Court opinion dated 6/22/06. Supreme Court No. 05-416. (PANEL) [03-16042] (Walker, Synitha) [Entered: 06/30/2006 09:17 AM]
- 07/28/2006  65 Filed Supreme Court judgment filed and entered in USSC No. 05-416 on 6/22/06 remanding case to 9th Circuit. (PANEL) [03-16042] [5907451] (Walker, Synitha) [Entered: 08/03/2006 12:04 PM]
- 08/07/2006  66 Filed Appellant Viet Mike Ngo's motion for leave to file brief on remand. (PANEL) [03-16042] served on 8/4/06 [03-16042] (Walker, Synitha) [Entered: 08/16/2006 01:21 PM]
- 08/22/2006  67 Filed order ( Harry PREGERSON, Alex KOZINSKI, John S. Rhoades): Apl't's motion or leave to file a brief or remand is GRANTED. Apl't shall file a brief on or before 9/25/06. Any response by Aples shall be field on or before 10/25/06. Briefs by both parties shall not exceed 30 pages in length. (PHONED AT 12 NOON) [03-16042] (Walker, Synitha) [Entered: 08/22/2006 11:38 AM]
- 09/25/2006  68 Filed original and 15 copies Appellant Viet Mike Ngo brief on REMAND of 23 pages, served on 9/25/06 (PANEL) [03-16042] (Walker, Synitha) [Entered: 09/28/2006 11:40 AM]
- 10/25/2006  69 Filed original and 15 copies Appellee Jeanne S. Woodford, Appellee A. P. Kane supplemental brief of 19 pages, served on 10/25/06 (PANEL) [03-16042] (Walker, Synitha) [Entered: 10/26/2006 11:17 AM]
- 04/27/2007  70 Filed order (Deputy Clerk: jf) Oral argument in tis matter is set for may 22, 2007 at 10:00 am at the US Court of Appeals Bldg at 125 South Grand Ave. in Pasadena, CA. (PHONED AT 12:35 pm) [03-16042] (Walker, Synitha) [Entered: 04/27/2007 12:32 PM]
- 04/27/2007  74 CALENDARED: PASA May 22 2007 10:00 am Courtroom 2 [03-16042] (AW) [Entered: 04/27/2007 03:38 PM]
- 05/08/2007  75 Filed D. Harris's in Appellant in Harris v. Baca motion for order that court consider the briefs on his appeal in the instant appeal, and for limited intervention. (PANEL) ; served on 5/4/07 [03-16042] (Walker, Synitha) [Entered: 05/08/2007 11:21 AM]
- 05/15/2007  76 Filed Defendant/Appellees in the D. Harris v. Baca appeal No. 05-56610 response to motion for order for consideration of briefs in his appeal and for limited intervention. served on 5/9/07 (PANEL) [03-16042] (Walker, Synitha) [Entered: 05/16/2007 01:26 PM]
- 05/17/2007  78 Received (VIA FAX)Jeanne S. Woodford, A. P. Kane additional citations dated: 5/17/07, served on 5/17/07 (served panel) [03-16042] (LN) [Entered: 05/17/2007 03:14 PM]
- 05/17/2007  80 Filed order (Harry PREGERSON, Alex KOZINSKI, John S. Rhoades): D. Harris' Motion for Order that Court Consider the Briefs on His Appeal in the Instant Appeal, and For Limited Intervention is DENIED. (Phoned csl @ 410pm) (XX) [Entered: 05/17/2007 04:14 PM]
- 05/17/2007  83 CJA travel authorization sent ( Authorization # 9CJA03-160420507 Pro Bono) to Meir Feder for Appellant Viet Mike Ngo . [03-16042] (AC) [Entered: 05/18/2007 03:49 PM]
- 05/18/2007  81 Received Jeanne S. Woodford, A. P. Kane additional citations, served on 5/17/07 (FAXED TO PANEL) [03-16042] (Walker, Synitha) [Entered: 05/18/2007 10:29 AM]
- 05/21/2007  87 Filed Aples' additional citations, served on 5/17/07 (PANEL) [03-16042] (MF) [Entered: 05/24/2007 10:12 AM]
- 05/22/2007  85 ARGUED AND SUBMITTED TO Harry PREGERSON, Alex KOZINSKI, John S. Rhoades [03-16042] (DR) [Entered: 05/22/2007 12:40 PM]
- 05/22/2007  86 Received in court Viet Mike Ngo additional citations, served on 5/22/07. (PANEL) [03-16042] (DR) [Entered: 05/22/2007 12:43 PM]
- 05/30/2007  88 Filed Appellant Viet Mike Ngo's motion for leave to file corrected brief on remand; served on 5/29/07 [6191250] (faxed to PANEL) [03-16042] (Hom, Howard) [Entered: 06/01/2007 11:05 AM]
- 05/30/2007  89 Received original and 15 copies Appellant Ngo's substitute brief of 24 pages to include corrected footnotes and a certificate of compliance served on 5/29/07. (PANEL) [03-16042] (Walker, Synitha) [Entered: 06/04/2007 10:40 AM]
- 05/30/2007  90 Received Jeanne S. Woodford, A. P. Kane additional citations, served on 5/30/07 (PANEL) [03-16042] (Walker, Synitha) [Entered: 06/04/2007 12:33 PM]

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|------------|--------------------------|---------------------|--|
| 06/20/2007 | <input type="checkbox"/> | 92                  | GTA bill reconciled ( Paid (pro bono)) for Meir Feder for Appellant Viet Mike Ngo . Authorization #: 9CJA03-160420507 [03-16042] (AC) [Entered: 06/20/2007 09:47 AM]                                     |
| 06/26/2007 | <input type="checkbox"/> | 93                  | CJA 21 travel voucher processed.AAF-PROBONO ( CJA 21 #: 052007) for Meir Feder for Appellant Viet Mike Ngo . [03-16042] (MV) [Entered: 06/26/2007 01:49 PM]  |
| 09/06/2007 | <input type="checkbox"/> | 94                  | Filed order (Deputy Clerk: jf) Due ot the death of Judge Rhoades, Judge Bybee has been drawn to replace him on the panel. (PHONE AT 9:17 AM) [03-16042] (Walker, Synitha) [Entered: 09/06/2007 09:12 AM] |
| 03/20/2008 | <input type="checkbox"/> | 99                  | Changed attorney participant class Attorney Meir Feder in 03-16042 for Appellant Ngo, Viet Mike in 03-16042 (JAC) [Entered: 03/20/2008 04:35 PM]   |
| 08/21/2008 | <input type="checkbox"/> | <a href="#">100</a> | FILED OPINION (HARRY PREGERSON, ALEX KOZINSKI and JAY S. BYBEE) AFFIRMED. FILED AND ENTERED JUDGMENT. (PH) [Entered: 08/21/2008 09:12 AM]  |
|            |                          | 14 pg, 107.15 KB    |  |
| 09/12/2008 | <input type="checkbox"/> | <a href="#">101</a> | MANDATE ISSUED.(HP, AK and JSB) (TB) [Entered: 09/12/2008 09:46 AM]  |
|            |                          | 1 pg, 26.78 KB      |  |

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