

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**

**AUG 19 2004**

**LEONARD GREEN, Clerk**

JOHN G. SPIRKO, JR.,

Petitioner-Appellant,

v.

BETTY MITCHELL, WARDEN,

Respondent-Appellee.

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**ORDER**

**BEFORE:**   BATCHELDER, DAUGHTREY, and GILMAN, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied. Judge Gilman would grant rehearing for the reasons stated in his dissent.

**ENTERED BY ORDER OF THE COURT**

*Leonard Green*

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**Leonard Green, Clerk**

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\*Judges Sutton and Cook recused themselves from participation in this ruling.