

FILED

UNITED STATES COURT OF APPEALS

OCT 15 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSEPH M. ARPAIO, Sheriff,

Defendant-Appellant.

No. 17-10448

D.C. No.

2:16-cr-01012-SRB-1

District of Arizona,

Phoenix

ORDER

Before: TASHIMA, W. FLETCHER, and TALLMAN, Circuit Judges.

On April 17, 2018, our Court issued an order authorizing the appointment of a “special prosecutor to provide briefing and argument to the merits panel” that will hear the appeal of former sheriff Joe Arpaio from the district court’s denial of his motion to vacate his conviction for contempt of court. *United States v. Arpaio*, 887 F.3d 979, 980 (9th Cir. 2018). On October 10, 2018, our Court denied en banc rehearing of that order. *United States v. Arpaio*, No. 17-10448, 2018 WL 4904770 (9th Cir. Oct. 10, 2018). Pursuant to our April 17, 2018 order, we hereby appoint Christopher G. Caldwell as special prosecutor for purposes of this appeal. The special prosecutor will be limited to the functions a government attorney would have performed in connection with Arpaio’s appeal in this Court had the government been willing to perform those functions.

The Clerk shall amend the docket to reflect that

Christopher G. Caldwell
Boies, Schiller and Flexner
725 S. Figueroa Street
Los Angeles, CA 90017
(213) 629-9040

is added as additional counsel of record for appellee United States of America.

Within 14 days after the date of this order, special prosecutor Caldwell shall register on the Court's website for electronic filing/noticing with the Case Management Electronic Case Files (CM/ECF) system if he is not already registered.

A briefing schedule will be established by separate order.

United States v. Arpaio, 17-10448

TALLMAN, Senior Circuit Judge, concurring in the form of the order:

I continue to believe—as expressed in my dissent from the Court’s order authorizing the appointment of a special prosecutor, *United States v. Arpaio*, 887 F.3d 979, 982 (9th Cir. 2018), and in Judge Callahan’s dissent from the denial of rehearing en banc, *United States v. Arpaio*, No. 17-10448, 2018 WL 4904770, at *5–11 (9th Cir. Oct. 10, 2018)—that the correct course in this case would be, at most, the appointment of an amicus curiae to defend the district court’s vacatur ruling. Having failed to persuade my colleagues, however, I respect the Court’s decision and therefore regrettably must concur in the form of the order appointing special prosecutor Caldwell.