

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

CHARLES EDWARD BYRD,  
*Plaintiff-Appellant,*  
v.  
MARICOPA COUNTY SHERIFF'S  
DEPARTMENT; JOSEPH M. ARPAIO;  
KATHLEEN O'CONNELL; AUSTIN  
PETERSON; DURANGO JAIL,  
*Defendants-Appellees.*

No. 07-16640  
D.C. No.  
CV-04-02701-NVW  
ORDER

Filed October 6, 2009

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**ORDER**

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

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