

FOR PUBLICATION

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

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

ORDER

Filed June 1, 2018

Before: Sidney R. Thomas, Chief Judge
and En Banc Coordinator

ORDER

A judge has made a *sua sponte* request for a vote on whether to rehear *en banc* the published order dated April 17, 2018 by a motions panel of this Court appointing a special prosecutor to defend the district court's denial of defendant Arpaio's request for vacatur of his criminal contempt conviction. *United States v. Arpaio*, 887 F.3d 979 (9th Cir. 2018).

Therefore, pursuant to General Order 5.4(c)(3), the parties are requested to file simultaneous briefs setting forth their respective positions on whether or not the order should be reheard *en banc*. Specifically, the parties are directed to

address the question as to whether the Court has the authority, either pursuant to Fed. R. Crim. P. 42(a)(2) or under its inherent authority, to appoint a special prosecutor under the circumstances presented by this case.

The briefs are not to exceed 7,000 words and shall be filed within 21 days of the date of this order. Amici are permitted, but not required, to file a brief within 21 days of the date of this order not to exceed 7,000 words stating their positions on whether the order should be reheard *en banc*.

Parties or Amici who are registered for appellate electronic case filing must file the response electronically without submission of paper copies. Parties or Amici who are not registered appellate electronic case filing filers must file 50 paper copies.