

2 Fed.Appx. 867

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)

United States Court of Appeals,
Ninth Circuit.

Damian HART; Michael G. McKane; Bartholomew L. Trumble, Plaintiffs-Appellees,

v.

Joe ARPAIO, the duly Elected Sheriff of Maricopa County; Henry H. Haws; George Campbell; Bob Corbin; Hawley Atkinson; Ed Pastor; Defendants-Appellants.

* Joe Arpaio is substituted for his predecessor Tom Agnos pursuant to Federal Rule of Appellate Procedure 43(c)(1).

No. 98-16995. | Submitted Dec. 9, 1999.**

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R.App. P. 34(a)(2).

| Submission Vacated and Deferred Dec. 21, 1999. | Resubmitted Jan. 23, 2001. | Decided Jan. 25, 2001.

Appeal from the United States District Court for the District of Arizona; Earl H. Carroll, District Judge Presiding. D.C. No. CV-77-00479-EHC.

Before BROWNING, RYMER, and KLEINFELD, Circuit Judges.

Opinion

MEMORANDUM***

*** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Maricopa County and Sheriff Joe Arpaio appeal the district court's order refusing to terminate a consent decree in accordance with the provisions of the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3526(b). The district court relied on the panel opinion in *Taylor v. United States*, 143 F.3d 1178 (9th Cir.1998). However, that opinion was subsequently withdrawn. 158 F.3d 1059 (9th Cir.1998). Since then, three decisions pertinent to the issues raised on appeal have been rendered: *Miller v. French*, 530 U.S. 327, 120 S.Ct. 2246, 147 L.Ed.2d 326 (2000); *Taylor v. United States*, 181 F.3d 1017 (9th Cir.1999) (en banc); and *Gilmore v. California*, 220 F.3d 987 (9th Cir.2000). *Gilmore* holds that § 3526(b) is not unconstitutional, and it controls this appeal on that issue.

Although Hart argues that the amended judgment in this case is similar to the judgment in *Taylor*, we disagree. The judgment here imposes extensive obligations on the County, provides for on-going compliance, monitoring and reporting, and establishes enforcement mechanisms including ultimately by the court. For this reason the constitutionality of § 3526(b) is not moot as it was in *Taylor*.

Accordingly, we reverse the district court's order and remand for further proceedings *868 consistent with *Gilmore*.¹

¹ In light of this disposition, the motions by the United States to intervene and by the County for remand are moot.

REVERSED AND REMANDED.

Parallel Citations

2001 WL 68611 (C.A.9 (Ariz.))