

No. 18-962

In The
Supreme Court of the United States

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IN RE: JOSEPH M. ARPAIO,

Petitioner.

—◆—
**On Petition For A Writ Of Mandamus
To The United States Court Of Appeals
For The Ninth Circuit**

—◆—
**AMICUS CURIAE BRIEF OF
CHRISTOPHER G. CALDWELL
IN OPPOSITION TO PETITION
FOR A WRIT OF MANDAMUS**

—◆—
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*Special Prosecutor Appointed by the
United States Court of Appeals for the Ninth Circuit*

QUESTION PRESENTED

Has Petitioner addressed and satisfied the requirements necessary for issuance of an extraordinary writ of mandamus?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
TABLE OF CONTENTS	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT	1
ARGUMENT	2
CONCLUSION.....	3

INTEREST OF *AMICUS CURIAE*

The United States Court of Appeals for the Ninth Circuit appointed Christopher G. Caldwell as Special Prosecutor to provide briefing and argument to the merits panel of that court, which will hear Petitioner's pending appeal from the district court's denial of his motion to vacate his conviction for criminal contempt of court.¹

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SUMMARY OF ARGUMENT

Petitioner fails to address the basic requirements for an extraordinary writ, much less establish that all three requirements are satisfied here. *See Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367, 380-81 (2004). Accordingly, Petitioner cannot meet the threshold procedural requirements for writ review.

¹ Pursuant to Rules 37.3 and 37.6 of the Rules of the Supreme Court, counsel of record for all parties received timely notice of *amicus curiae's* intention to file this brief, and all parties have granted consent to the filing of this brief by *amicus curiae*. On February 12, 2019, Petitioner's counsel sent an email consenting to the filing of this *amicus curiae* brief, and on February 22, 2019, Respondent provided a letter of consent to the filing of this *amicus curiae* brief. No counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. In addition, no persons or entities other than *amicus curiae* made a monetary contribution to the preparation or submission of the brief.

ARGUMENT

Amicus curiae understands that Respondent will be filing an opposition to Petitioner’s petition for a writ of mandamus, on the basis that the standard for granting an extraordinary writ of mandamus has not been satisfied. *Amicus curiae* submits this brief in support of that opposition.

This Court repeatedly has observed that the writ of mandamus is a “drastic and extraordinary” remedy “reserved for really extraordinary causes.” *Ex parte Fahey*, 332 U.S. 258, 259-60 (1947); *see also Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988).

Petitioner fails to address the basic requirements for an extraordinary writ, much less establish that all three requirements are satisfied here. *See Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367, 380-81 (2004) (requiring petitioner to demonstrate that (1) he has no other adequate means to attain relief, (2) adequate relief cannot be obtained in another form or another court, and (3) the writ is an appropriate exercise of discretion under the circumstances) (internal citations omitted); *see also* S.Ct. Rules 20.1 & 20.3. Accordingly, Petitioner does not come close to carrying the heavy burden that he bears in seeking such extraordinary relief.²

² This Court denied Petitioner’s previous Petition for Writ of Mandamus, *see In Re Joseph M. Arpaio*, 138 S.Ct. 117 (2017), as well as his prior petitions for writs of certiorari and his request for a stay.

Amicus curiae has reserved argument on the substantive issues raised by Petitioner, because he agrees with Respondent's position that Petitioner cannot meet the threshold procedural requirements for writ review. In the event that this Court is inclined to grant the petition, however, *amicus curiae* respectfully requests an opportunity to submit briefing on the substantive issues raised by Petitioner.

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CONCLUSION

For the foregoing reasons, Petitioner's petition for a writ of mandamus should be denied.

DATED:
March 27, 2019

Respectfully submitted,
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