

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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July 12, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-15016-U
Case Style: Anthony Pitch v. USA
District Court Docket No: 5:14-mc-00002-MTT

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

For the purpose of the upcoming en banc rehearing in the above referenced case, the court desires for counsel to focus their briefs on the following issues:

(1) This Court, in *In re Petition to Inspect and Copy Grand Jury Materials (Hastings)*, 735 F.2d 1261 (11th Cir. 1984), recognized that courts have inherent power to go beyond the exceptions listed in Federal Rule of Criminal Procedure 6(e) to disclose grand jury records. Should we overturn our holding from *Hastings* and conclude that courts have no power to go beyond the exceptions listed in Rule 6(e)?

(2) If courts have inherent power to go beyond the exceptions listed in Rule 6(e), may courts use this inherent power to recognize an exception to grand jury secrecy for matters of historical significance?

(3) If courts have the inherent power to disclose grand jury records for matters of historical significance, what test should they apply when deciding whether to grant such disclosure?

(4) Whether the district court's disclosure of the grand jury records in their entirety was an abuse of discretion given (a) the purposes of grand jury secrecy and (b) the government's failure to request any redactions.

APPELLANT'S EN BANC BRIEF SHALL BE SERVED AND ELECTRONICALLY FILED ON OR BEFORE AUGUST 12, 2019. APPELLEE'S EN BANC BRIEF SHALL BE SERVED AND ELECTRONICALLY FILED ON OR BEFORE SEPTEMBER 11, 2019. An en banc reply brief shall be filed on or before September 26, 2019. NO EXTENSIONS WILL BE GRANTED. Parties should format their briefs according to Federal Rules of Appellate Procedure 28 and 32 and shall contain the title "En Banc Brief". Each brief must adhere to the

page and type-volume limitations (Rule 32(a)(7)). Twenty (20) copies of the en banc briefs should be filed (appellant's in blue covers, appellee's in red covers and any reply in gray covers). The parties are expected to serve all parties a copy of their brief before the close of business on the day of filing. **PAPER COPIES OF THE BRIEFS SHOULD BE RECEIVED BY THE NEXT BUSINESS DAY.** The filing of an en banc amicus brief is governed by 11th Cir. R. 35-8.

All Counsel are requested to submit 16 copies of their original opening panel briefs and supplemental authorities prior to Monday, August 12, 2019.

Oral argument will be conducted the week of October 21, 2019 in Atlanta, Georgia. Each party will be allotted twenty (20) minutes per side for oral argument. Counsel will receive subsequent correspondence regarding the specific time of oral argument.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jenifer L. Tubbs
Phone #: 404-335-6166

BR-1CIV Civil appeal briefing ntc issued