

**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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January 31, 2022

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 19-14650-U  
Case Style: USA v. Julian Garcon  
District Court Docket No: 9:19-cr-80081-JIC-1

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

**Did the district court err in concluding that defendant Julian Garcon met the safety-valve-eligibility requirement set forth at 18 U.S.C. § 3553(f)(1)?**

**To answer this question, the parties should address, but are not limited to, the following issues:**

- (1) Do we interpret the “and” in 18 U.S.C. § 3553(f)(1) in the disjunctive or conjunctive?**
- (2) How do we interpret § 3553(f)(1)’s language referring to a “prior 3-point offense, as determined under the sentencing guidelines” and a “prior 2-point violent offense, as determined under the sentencing guidelines” when § 4A1.1 of the Sentencing Guidelines assigns criminal history points to a “prior sentence of imprisonment,” not a “prior offense”?**

APPELLANT’S EN BANC BRIEF SHALL BE SERVED AND ELECTRONICALLY FILED ON OR BEFORE MARCH 14, 2022. APPELLEES’ EN BANC BRIEF SHALL BE SERVED AND ELECTRONICALLY FILED ON OR BEFORE APRIL 13, 2022. An en banc reply brief shall be electronically filed on or before May 4, 2022. 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). Fifteen (15) copies of the en

banc briefs should be filed. Counsel is expected to serve all parties a copy of their brief by the close of business on the day of filing. Paper copies of the briefs should be mailed the next business day. Counsel is not required to submit the additional copies of the previous briefs.

The filing of an en banc amicus brief is governed by 11<sup>th</sup> Cir.R.35-8.

Oral argument will be conducted the week of June 20, 2022 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-1 Criminal appeal briefing ntc issued