

**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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October 09, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-10636-U

Case Style: Pankajkumar Patel, et al v. U.S. Attorney General

Agency Docket Number: A072-565-851

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) In *Gonzalez-Oropeza v. U.S. Att’y Gen.*, 321 F.3d 1331 (11th Cir. 2003) (per curiam), this Court interpreted 8 U.S.C. § 1252(a)(2)(B)(i) and decided that it strips our jurisdiction to review only discretionary decisions, and does not preclude appellate review of non-discretionary legal decision that pertain to statutory eligibility for discretionary relief. In a line of cases that followed, starting with *Camacho-Salinas v. U.S. Att’y Gen.*, 460 F.3d 1343 (11th Cir. 2006) (per curiam), this Court interpreted 8 U.S.C. § 1252(a)(2)(B)(i) to strip our jurisdiction to review any decision, unless the petitioner raises a question of law or a constitutional claim. Which of these rules most correctly adheres to the terms of 8 U.S.C. § 1252(a)(2)(B)?
- (2) Is a petitioner’s subjective intent to obtain a purpose or benefit, which is an element for inadmissibility under 8 U.S.C. § 1182(a)(6)(c)(ii)(I), a non-discretionary finding pertaining to statutory eligibility for immigration relief?
- (3) *Gonzalez-Oropeza* held that the jurisdictional bar “does not preclude review of non-discretionary legal decisions that pertain to statutory eligibility for

discretionary relief.” Is there a distinction between review of non-discretionary legal decisions and factual findings made in support thereof?

- (4) If we have jurisdiction to review factual findings made in support of nondiscretionary determinations of statutory eligibility, does substantial evidence support the BIA’s finding that Patel had the requisite subjective intent when he made the false representation of citizenship?

APPELLANTS’ EN BANC BRIEF SHALL BE SERVED AND ELECTRONICALLY FILED ON OR BEFORE NOVEMBER 18, 2019. APPELLEE’S EN BANC BRIEF SHALL BE SERVED AND ELECTRONICALLY FILED ON OR BEFORE DECEMBER 18, 2019. An en banc reply brief shall be filed on or before January 8, 2020. 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 delineated in Rule 32(a)(7). Twenty (20) copies of the en banc briefs should be filed (appellants’ in blue covers, appellee’s in red covers and any reply in gray covers). The parties are expected to insure that all parties receive a copy of their briefs 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 20 copies of their original opening panel briefs and supplemental authorities prior to November 18, 2019.

Oral argument will be conducted the week of February 24, 2020 in Atlanta, Georgia. Each party will be allotted 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
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BR-3ACIV Agency briefing ntc issued