

TODD BLANCHE'S UNSEALING REQUEST IN FLORIDA WAS DESIGNED TO FAIL

I know, right? Todd Blanche's unsealing request in SDNY is also designed to fail.

But I want to look at how the denial went down in SDFL. Not only did Judge Robin Rosenberg make sure to get DOJ to reaffirm it knew it was asking her to do something it could not do, but she made a point of saying that the request to unseal *two* grand jury dockets – one from 2007, the year of the Jeffrey Epstein plea deal – is not related to the SDNY dockets, because DOJ is not conducting any investigation in those SDNY dockets.

The original request acknowledges this won't work

Blanche's original request to unseal – he names two grand juries, one (05-02) before the Alex Acosta plea deal and one (07-103) the same year – differs from the SDNY ones in several ways.

First, SDFL's US Attorney, Hayden O'Byrne, signed and filed the court filings. Blanche adds language to say that DOJ would work with SDFL to make redactions of victim-related information if the grand jury transcripts were released.

Second, Blanche acknowledges that he's requesting transcripts "associated with grand jury investigations," as opposed to indictments.

Third, Blanche includes a paragraph noting that under 11th Circuit precedent, SDFL can't release grand jury transcripts.

■ The Department of Justice recognizes

that this Court is bound by *Pitch v. United States* [citation omitted] (district courts lack inherent, supervisory power to authorize the disclosure of grand jury records outside of exceptions enumerated in Rule 6(a)(3)). Nevertheless, the Department raises this argument due to the significance of the matter and to preserve it for any potential appeal.

Pitch is a 2020 decision in which the 11th Circuit rejected a historian's effort to unseal grand jury transcripts about the investigation into a 1946 lynching, during a period when J. Edgar Hoover was reluctant to bring cases on lynching.

Judge Rosenberg asks how Blanche thinks this could work

In response, Judge Robin Rosenberg (an Obama appointee) instructs DOJ to clarify a few things. First, she asks whether DOJ thinks this request falls under any of the exceptions under *Pitch*, that 11th Circuit precedent.

The rule of secrecy is subject to exceptions, but in this Circuit, there are only five—that is, there are five, limited exceptions under which a district court may authorize the disclosure of grand jury materials. [citation omitted]

It is unclear from the Petition whether the government is arguing that any of the five exceptions applies to its request.

[snip]

In supplemental briefing, the Government shall clarify whether **(1) it concedes that this Court must deny the Petition**

under binding Eleventh Circuit precedent, but that it nonetheless seeks an order from this Court so that it may file an appeal; or (2) it argues that an exception applies that would permit this Court to grant the Government's Petition, together with legal argument in support of same.

She then asks whether there's any reason to believe that a grand jury from 2005 and 2007 arose out of the one in SDNY, which is the only way she could transfer it.

Because the Florida Proceedings appear to have been initiated many years prior to the New York Proceedings, any argument that the Florida Proceedings nonetheless arose out of the New York Proceedings must be accompanied with an explanation and with legal argument in support of the same.

[snip]

Alternatively, if, under applicable law, there is no legal basis to transfer the Petition, the Government should clearly state the same.

Basically, Rosenberg was just forcing the government to concede that they were asking her to do something she could not.

SDFL attempts to claim Rosenberg has the authority

The response from SDFL (it's not clear who is behind this response; O'Byrne signed it with an electronic signature) answers Rosenberg's questions in reverse. First, SDFL claims that Rosenberg should transfer the case, because the petition arises out of those much later indictments.

This Petition to Disclose (filed July 18, 2025) arises out of two highly publicized judicial proceedings in the Southern District of New York: the indictment and criminal prosecution of Jeffrey Epstein [citation omitted], and the subsequent federal criminal indictment, trial, and conviction of Ghislaine Maxwell in the Southern District of New York [citation omitted]. Indeed, the relief sought in this petition is ancillary to the relief sought in those cases.

Then, SDFL answers Rosenberg’s first question – conceding she has no authority to release the grand jury materials, but then citing irrelevant precedent claiming she could anyway.

Consistent with its petition, the government recognizes the Eleventh Circuit precedent holds that no exception outside those expressly enumerated under Criminal Rule 6(e)(3) authorizes a court to publicly disclosure grand jury materials. [citation to *Pitch* omitted] The government also recognizes that, in this circuit, only an en banc decision or the Supreme Court may overrule that decision.

That said, decisions from other circuits support public disclosure of grand jury materials under “special circumstances,” including when a matter possess historical interest by the public.

Rosenberg notes that the New York proceeding is irrelevant

After reviewing the posture of the case, Rosenberg responds in the same order she posed

the question. She notes that the exceptions SDFL cited are not among those under which she would have the authority under Eleventh Circuit precedent to release the transcripts.

The Government's Petition to unseal the grand jury transcripts is not based on any of the exceptions in Rule 6. Instead, the Government makes two arguments outside Rule 6. First, the Government argues that disclosure is proper because "many of the rationales supporting grand jury secrecy under Rule 6(e) no longer apply to this investigation because of Jeffrey Epstein's death." Supp. Br. at 5. It further argues that "the public's strong interest in th[e] historical investigation into Jeffrey Epstein constitutes a special circumstance justifying public disclosure."

[snip]

Contrary to the Government's stated basis and the Second and Seventh Circuits,¹ the Eleventh Circuit has directly held that a district court "do[es] not possess ... the power to order the release of grand jury records not covered by Rule 6(e)(3)(E).

[snip]

The government does not assert that disclosure is appropriate under any exception in Rule 6(e)(3)(E).

[snip]

The Government concedes as much in its Petition.

1. A district court is bound by the decisions of its intermediate appellate court. That is, this court, the Southern District of Florida, is bound by the decisions of the Eleventh Circuit Court of Appeals.

I assume Rosenberg provided that elementary language about precedent for readers who don't know how this works, but I can't help but hear some scolding at DOJ for trying to confuse the issue.

She then denies the request to transfer the case, in significant part because Blanche is not asking to transfer the grand jury proceedings to support an ongoing investigation in SDNY.

The Government's request for transfer does not arise out of a judicial proceeding; the Government does not seek the disclosure of evidence for itself. Indeed, the Government provided the evidence sought to be unsealed with the Petition. Consistent with the fact that the Government does not need the evidence, it has not filed the Petition for the purpose of prosecution⁴ the New York Federal Proceedings – the trial-level proceedings concluded years ago. Similarly, the Government has not filed the Petition because unsealing the evidence is necessary for the proper litigation of the New York Federal Proceedings.

[snip]

Further, the text of the Petition sources the need for the Petition in the Government's recent public memorandum summarizing its investigation into Mr. Epstein. Pet. at 1 ("[T]he Department of Justice and Federal Bureau of Investigation issued a memorandum describing an internal [sic exhaustive] review undertaken of investigative holdings relating to Jeffrey Epstein.") Because that memorandum resulted in great public interest, the Government filed the instant Petition. *Id.* {"[T]here has been extensive public interest in the basis for the Memorandum's conclusions.") As such, the request to unseal arises from the Government's

internal investigation, from its public statements about that investigation, and from great public interest in the investigation, but it does not arise from the New York Federal Proceedings themselves. The Government has not filed the Petition in response to a pleading, objecting, strategy or ruling in the New York Federal Proceedings, and it does not state that it will use the unsealed evidence in furtherance of any case-related objective. The trial proceedings have concluded.

And with that, she denied the request and ordered that this case “should be directly assigned to the undersigned,” just in case anyone else in the District tried to poach the case, I guess.

At one level, I think by forcing the secondary briefing, Rosenberg forced DOJ to concede that they knew they were making a request she had to reject. She’s not going to take the fall for this.

More interesting, though, is that second grand jury, the one from the same year that Epstein signed a plea deal eliminating any possibility of further charges for him or his co-conspirators (including Ghislaine Maxwell) in SDFL. Todd Blanche is claiming that it pertains to Jeffrey Epstein personally. I’m not sure whether it does or not.

Update: Per the Office of Professional Responsibility summary of the Alex Acosta investigation, there was a 60-count indictment in SDFL in May 2007. It’s possible the prosecutor needed to get a second grand jury after the first expired. Or it could be something else.

In May 2007, the AUSA submitted to her supervisors a draft 60-count indictment outlining charges against Epstein. She also provided a lengthy memorandum

summarizing the evidence she had assembled in support of the charges and addressing the legal issues related to the proposed charges.

Update: I failed to note that Seamus Hughes found this docket.