

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
3:75-CR-26-3  
5:06-CV-24-F

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UNITED STATES OF AMERICA )  
v. )  
JEFFREY R. MacDONALD )  
Defendant )

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**RESPONSE TO GOVERNMENT’S  
MOTION FOR SUPPLEMENTAL BRIEFING ON  
MOVANT’S RULE 59(e) MOTION**

NOW COMES defendant, Jeffrey R. MacDonald, by and through his undersigned counsel, and briefly responds to the government’s motion for supplemental briefing. [DE 365] While Dr. MacDonald does not object to supplemental briefing if this Court deems it helpful, he disagrees with the government’s proposed order of submission and time constraints. In further support of this response, Dr. MacDonald shows the following:

1. In its motion, the government argues Dr. MacDonald “mad[e] new arguments to support alteration of the Court’s judgment of July 24, 2014.” [DE 365 at 1-2] In his reply [DE 364] to the government’s response to his motion to alter or amend [DE 358], Dr. MacDonald did not make new arguments. Rather,

he included new information supporting his motion. Moreover, this new information came from a report of the Office of Inspector General of the Department of Justice, some of which the government itself had lodged with this Court. [DE 363] Because this new information dealt directly with this case, but was included in the report of an investigation of the FBI Laboratory that reviewed more than 22,000 cases, Dr. MacDonald “suggest[ed] this Court might order further supplemental briefing to aid in its determination of this matter.” [DE 363 at 2 n.1] However, Dr. MacDonald’s position was the new information simply bolstered his claim that this Court’s judgment should be altered because the record demonstrably shows the government’s positions throughout this litigation has hinged on FBI laboratory analysts whose performance and credibility has now been rebuked by the Department of Justice itself.

2. If this Court desires supplemental briefing, which Dr. MacDonald will provide if directed, it should not adopt the government’s proposal that it be allowed to sit back and respond to Dr. MacDonald in the first instance. The government ought to bear some burden in defending or explaining the misfeasance of its analysts. Thus, simultaneous briefing is more appropriate. If either party found it necessary to respond to the other party’s submission, it could seek leave to file a short reply.

3. The undersigned also made it clear in the reply that he needed at least

sixty (60) days to file any supplemental briefing required by this Court. His pre-existing litigation responsibilities, which include a brief due on 22 October 2014 in the United States Court of Appeals for the Fourth Circuit, a brief due in the North Carolina Court of Appeals on 29 October 2014, a petition for a writ of certiorari due in the Supreme Court of the United States on 31 October 2014, and a brief in opposition to a petition for a writ of certiorari on due in the Supreme Court of the United States on 5 November 2014, as well as other work, justify making any supplemental brief for Dr. MacDonald due no sooner than sixty days after entry of an order by this Court.

4. Dr. MacDonald recognizes he bears the burden of persuasion on his motion to alter or amend the judgment. But this burden does not necessarily mean the supplemental briefing, necessitated by and offered to explore the newly revealed information from the Department of Justice, should be done in the order proposed by the government. [DE 365 at 3] Simultaneous briefing would be more appropriate.

For the reasons stated herein, as well as in his previous submissions, Jeffrey R. MacDonald respectfully requests that this Court withhold ruling on the motion to alter and amend and allow the parties sixty (60) days in which to file a supplemental memorandum addressing impact of the newly revealed information on the evidence as a whole.

This the 17<sup>th</sup> day of October, 2014.

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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on 17 October 2014, I electronically filed the foregoing Response to Government's Motion for Supplemental Briefing on Movant's Rule 59(e) Motion with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record in this matter.

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