

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JEFFREY R. MACDONALD,
Defendant-Appellant

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APPEAL NO. 14-7543

**MOTION OF APPELLANT
TO EXTEND TIME
TIME TO FILE OPENING
BRIEF AND APPENDIX**

TO THE HONORABLE CLERK OF THE FOURTH CIRCUIT COURT OF APPEALS

NOW COMES the Defendant and Appellant, Jeffrey R. MacDonald, through his undersigned attorney, William M. Palmer, Esq., and moves this Honorable Court to extend the time for the Appellant to file and serve his Opening Brief and Appendix for 75 days, to be reset to be due on August 31, 2015, and to reset subsequent due date(s) by the same time period, or alternatively for 12 days, to be reset to be due on June 29, 2015, and to reset subsequent due date(s) by the same time period,

In support of this Motion, the Defendant-Appellant provides the Court with the following:

1. William M. Palmer, Esq., attorney for Defendant-Appellant, appeared on February 9, 2015.
2. The Court set the Appellant’s Brief and Appendix to be due on March 17, 2015, and the Response Brief to be due on April 10, 2015, and then reset those deadlines to be April 16, 2015 and May 11, 2015; subsequently reset those deadlines to be May 18, 2015, and June 12, 2015; and subsequently reset those deadlines to be June 17, 2015 and July 13, 2015.

3. Attorney Palmer sought the most recent extension to enable himself to successfully communicate with his client.
4. Attorney Palmer subsequently has successfully communicated with his client regarding the issues of the case, and was prepared to complete the brief and appendix pursuant to the schedule set by the Court.
5. However, there have been two significant but unrelated developments since the last extension was sought and granted, one regarding the defendant's case and one personal regarding Attorney Palmer
6. Firstly, the District Court denied Defendant's Motion to Alter or Amend Judgment, DE-383. This was a motion to amend the Court's judgment denying Defendant's Sec. 2255 Motion to Vacate his conviction, DE-355, that Sec. 2255 motion having a lengthy history before the District Court as well as before this Court.
7. The Defendant intends to file a Notice of Appeal to this Court appealing the District Court's denial of his Motion to Vacate and Motion to Alter or Amend Judgment.
8. The Defendant has not yet filed his Notice of Appeal as he is presently in the process of identifying who will be his appellate attorney and retaining that attorney.
9. At that point, Defendant will file a Notice of Appeal and there will be another appellate issue before this Court: one that is the crux of Defendant's claim to innocence and his principal appeal.
10. Defendant wants Attorney Palmer, as his IPA appellate attorney, to have the opportunity to consult with and coordinate with his Sec. 2255 appellate attorney, so that they might present uniform and consistent statements and arguments to the Court. This will not be

possible until the appellate attorney is retained and files the Notice of Appeal and his Appearance.

11. Attorney Palmer is a solo practitioner and working on this matter *pro bono*.
12. Attorney Palmer, as a member of the bar of this Court, sees the Defendant's request as in the interest of justice, as the Defendant's ability to have his attorneys' coordinate their analysis and arguments and statements to the Court is a fundamental right of any individual and here, the Defendant's ability to have that happen is inherently diminished because of his imprisonment and resultant hindrances on his ability to communicate with his attorneys.
13. Here, where the Defendant is imprisoned pursuant to what is effectively a life sentence it is particularly in the interests of justice that his attorneys' ability to communicate amongst themselves not be hampered. Given that Defendant has not yet retained his appellate attorney, Attorney Palmer's ability to communicate with that attorney is inherently hampered until that attorney is retained and appears before this Court.
14. Importantly, the issues that will be presented to the Court through the IPA appeal are substantially intertwined with the issues that will be presented to the Court through the sec. 2255 appeal. This is because the IPA appeal involves in great part whether additional DNA testing has the likelihood of providing additional evidence that might bear on Defendant's guilt or innocence. That analysis inherently involves to what extent the present evidence points towards or against Defendant's guilt or innocence, which is the crux of the sec. 2255 appeal.

15. In Attorney Palmer's respectful opinion, the Court will eventually find that a consolidated appeal is in the interests of justice or that the matters raised by the IPA and sec. 2255 appeals are so overlapping that the same panel should hear both appeals.
16. Given this likelihood and that therefore the IPA appeal would be resolved in tandem with or at the same time as the sec. 2255 appeal, it does not harm the interests of justice or any interest the Court has in efficient process of its docket to allow briefing to be delayed in this appeal to either be combined with or at submitted at the same time as that of the sec. 2255 appeal.
17. Furthermore, given that the Defendant is presently indefinitely imprisoned and given that there will be another appeal coming in any circumstance, any delay in this appeal does not harm any interests of the public nor of the government.
18. For all of the above reasons, Defendant respectfully submits that it is in the interest of justice most importantly, as well as in the interests of this Court in terms of efficient processing of its dockets, for the 75-day extension to be granted.
19. If the Court will not grant the request for the 75-day extension, Attorney Palmer respectfully requests that it grant a briefer extension on independent personal grounds.
20. An immediate family member of Attorney Palmer was hospitalized 13 days ago, on June 4, 2015 with a grave and life-threatening illness. Since the day of the family member's hospitalization, as the sole family member for the hospitalized individual, Attorney Palmer has had to essentially completely suspend his law practice to support the family member through her hospitalization, including days in the Intensive Care Unit, through multiple daily visits (mornings, afternoons and evenings) and multiple meetings with attending physicians concerning care decisions and prognosis for the individual. The

family member is still considered acutely ill by the hospital and only recently has her illness somewhat stabilized. Attorney Palmer anticipates being able to resume his practice in significant part by the end of this week and (absent a precipitous decline in the hospitalized individual's health) thereby anticipates being able to complete the brief and appendix by June 29, 2015. (Attorney Palmer respectfully notifies the Court of the caveat that if his family member dies at the hospital or is sent home in his care to die at home he may ask the Court for another extension.)

21. Defendant has not solicited the U.S. government's position regarding the 75-day extension to allow coordination of the coming sec. 2255 appeal and this instant IPA appeal.

22. The Plaintiff-Appellee, the U.S. government, does not oppose this request insofar as it involves extending the time for filing the brief and Appendix up to and including June 29, 2015.

Dated: June 17, 2015

Respectfully submitted,

JEFFREY R. MACDONALD
Defendant & Appellant,
By

/s/ William M. Palmer

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CERTIFICATION OF SERVICE

I certify that on this day June 17, 2015, this paper is being served on all counsel of record by email through the ECF system pursuant to the Federal Rules of Appellate Procedure and the Local Rules.

/s/ William M. Palmer
William M. Palmer