

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 3:75-CR-26-F  
No. 5:06-CV-24-F

UNITED STATES OF AMERICA	)	
	)	GOVERNMENT'S MOTION FOR
v.	)	SUPPLEMENTAL BRIEFING ON
	)	MOVANT'S RULE 59(e) MOTION
JEFFREY R. MacDONALD,	)	
Movant	)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby submits this Motion for Supplemental Briefing on Movant's Rule 59(e) Motion and, in support, shows unto the Court the following:

1. On August 21, 2014, the defendant filed a Motion to Alter or Amend Judgment pursuant to Fed. R. Civ. P. 59(e), citing in support of this motion the July 2014 Report of the Department of Justice Office of the Inspector General, entitled *An Assessment of the 1996 Department of Justice Task Force Review of the FBI Laboratory*. DE-357 at 3.

2. On September 11, 2014, the Government filed a Response to Defendant's Motion requesting that the Court deny the Motion to Alter or Amend, and deny defendant's request for a certificate of appealability. DE-358.

3. On September 23, 2014, the Government filed with the Court a letter and attachments regarding an FBI review of microscopic hair analysis in past cases, received by mail on September 22, 2014, from Norman Wong, Special Counsel, Executive Office for U.S. Attorneys, United States Department of Justice. DE-363.

4. On September 25, 2014, the defendant filed a Reply to the Government's Response (DE-364) making new arguments to support alteration of the Court's judgment of July 24, 2014,

or, in the alternative, an order allowing the parties sixty (60) days for supplemental memoranda. DE-364 at 11.

5. The Government does not contest the notion that Movant might need more than two days to prepare a memorandum based on material<sup>1</sup> Movant's counsel had not seen prior to September 23, two days before the due date of his Reply. However, the Movant is the moving party and the party with the burden of proof. Thus, it is necessary for the Government to know what new arguments or claims that Movant is making before responding to them.

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<sup>1</sup> As noted in the descriptions of the Exhibits attached to the Government's Notice of Filing, the contents of the lab reports and testimony enclosed with the letter from DOJ do not constitute "new evidence." See DE-363 at 1-2. The only things "new" to the case are the assertions contained in the FBI's "Microscopic Hair Comparison Analysis: Result of Review," dated August 15, 2014. DE-363-3.

6. Accordingly, the Government hereby requests the following briefing schedule: that the Movant be permitted to submit a memorandum supporting his Reply within thirty (30) days of receipt of the Court's Order on this motion, and that the Government be permitted to submit its sur-reply within thirty (30) days of the filing of Movant's memorandum.

Respectfully submitted, this the 26th day of September, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing document upon the defendant in this action either electronically or by placing a copy of same in the United States mail, postage prepaid, and addressed to counsel for defendant as follows:

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This, the 26th day of September, 2014.

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