

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 15-7136

(3:75-CR-00026-F-1)

UNITED STATES OF AMERICA)	
)	
Plaintiff - Appellee)	MOTION OF THE UNITED STATES
v.)	FOR LEAVE TO EXCEED LENGTH
)	LIMITATION IN PAGE-PROOF
JEFFREY R. MacDONALD)	RESPONSIVE BRIEF
)	
)	
Defendant – Appellant)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby moves the Court for leave to file a response brief that exceeds the 14,000 word limit designated by Rule 32(a)(7)(A) of the Federal Rules of Appellate Procedure and, in support thereof, shows unto the Court the following:

1. Under the Court’s Informal Preliminary Briefing Order, dated July 21, 2015, [Doc: 3-2], MacDonald was permitted to file an informal brief. On November 12, 2015, he filed a 58-page informal brief, seeking issuance of a Certificate of Appealability (“COA”). Pursuant to the Court’s July 21 Order [Doc: 3-2] and Fourth Circuit Local Rule 22(a)(1)(B), no responsive brief from the Government was authorized. This Court granted the COA on April 4, 2016, and set a formal briefing schedule, which was later modified to allow for the deferred filing of the joint appendix [Doc: 13]. Pursuant to a one-week extension, MacDonald filed his Opening Page-Proof Brief on June 7, 2016. [Doc: 22]. The Government’s subsequent motion for extension of time was granted in part and its Responsive Page Proof Brief is now due August 2, 2016. [Docs: 23, 25].

2. The Appellee's Response brief is the first and only opportunity for the Government to set forth its position on MacDonald's appeal from the denial of his successive collateral attacks on his conviction pursuant to 28 U.S.C. § 2255. The brief will need to summarize all of the litigation since this Court's remand in 2011, see United States v. MacDonald, 641 F.3d 596 (4th Cir. 2011), against the backdrop of the litigation that led up to 2011, beginning with the indictment in 1975.

3. The MacDonald trial took place in 1979, and has been the subject of numerous appeals and post-conviction motions during the intervening years. The record is massive. MacDonald has raised many points in his opening brief that have been the subject of litigation in the past, and this Court will benefit from a full explanation of how these issues were previously litigated in order to conduct an informed review of this case. The undersigned attorneys have assessed the necessary parts of the record and find that we are unable to provide a complete response to MacDonald's arguments within the current word limit.

4. Accordingly, the Government respectfully requests that the length limit for the Government's page-proof responsive brief be expanded from 14,000 words to 21,000 words. This will match the total number of words afforded MacDonald in his opening and reply briefs.

5. Counsel for appellant has been contacted for his position regarding this motion and has stated that he respectfully opposes the Government's motion, on the grounds that appellant had much more material that he wished to include in his Opening Brief but did not do so in compliance with the word count limitation of the Rules of Appellate Procedure. Appellant requests that should the Court grant the Government's motion, it also grant appellant a similar expansion of the word count limit in his Reply Brief to respond to the Government's expanded filing.

WHEREFORE, the United States respectfully requests that the length limitation on its Responsive Page-Proof Brief, pursuant to FRAP 32(a)(7)(A), be expanded to 21,000 words.

Respectfully submitted, this 21st day of July, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Motion of the United States for Leave to Exceed Length Limitation in Page-Proof Responsive Brief upon the Appellant in this action by filing same with the Court via the CM-ECF system, which will send notification of such filing to counsel for Appellant as follows:

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This, the 21st day of July, 2016.

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