

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-7136

UNITED STATES OF AMERICA,

Appellee,

v.

JEFFREY R. MACDONALD

Appellant.

**APPELLANT’S MOTION TO EXCEED LENGTH
LIMITATION IN REPLY BRIEF**

NOW COMES APPELLANT Jeffrey R. MacDonald, through undersigned counsel, and respectfully moves this Court for an order permitting him to file a Reply Brief that exceeds the 7,000 word limit designated by Rule 32(a)(7) of the Federal Rules of Appellate Procedure. For the reasons set out below, Appellant moves to be permitted to file a Reply Brief that does not exceed 14,000 words. In support of this Motion, Appellant shows the Court the following:

1. Appellant was convicted in the United States District Court for the Eastern District of North Carolina in August 1979 of one count of first degree murder and two counts of second degree murder, involving the deaths of his wife

and young daughters. This appeal is the appeal of the district court's 169-page order denying Appellant's Motion to Vacate his Conviction under 28 U.S.C. § 2255, after an evidentiary hearing on remand resulting from this Court's most recent opinion in this matter. *See United States v. MacDonald*, 641 F.3d 596 (4th Cir. 2011). Appellant filed a timely Notice of Appeal from the district court's order denying his § 2255 motion on July 16, 2015.

2. MacDonald filed his page-proof Opening Brief on June 7, 2016. MacDonald complied with the 14,000 word limit of Rule 32(a)(7) in his Opening Brief, by filing an Opening Brief containing 13,978 words.

3. On July 21, 2016, the Government filed a motion seeking to exceed the word limitation of Rule 32(a)(7) in its Response Brief, by an additional 7,000 pages, for a total length of 21,000 words. In support of its Motion, the Government noted the massive nature of the record in this case, and its desire to fully address all relevant points at issue in this appeal in its filing.

4. MacDonald opposed the Government's Motion on the grounds that he had excluded much material that he wished to include in his Opening Brief in order to comply with the 14,000 word limit of the Rules, and noted that if the Court granted the Government's request that he would request a similar expansion of the word limit in his Reply Brief, so that he may fully respond to the Government's expanded arguments.

5. On July 26, 2016, this Court granted the Government's Motion, permitting it to file a Response Brief not in excess of 21,000 words. The Order noted that if MacDonald wished to file a Reply Brief in excess of 7,000 words, a motion would be required.

6. MacDonald's Reply Brief is currently due on August 29, 2016.

7. MacDonald respectfully requests that he be permitted to file a Reply Brief that does not exceed 14,000 words. In this case, MacDonald excluded much material that he wished to include in his Opening Brief (including extensive factual material) to comply with the 14,000 word limit. The Government has filed a Response Brief that contains detailed and extensive factual arguments that MacDonald needs to fully respond to and which he was not able to address in his Opening Brief (or any other earlier filing). Moreover, the Government in its argument cites to summaries of arguments it has previously submitted in the record. MacDonald needs to address these issues as well in his Reply Brief. As the Government noted in its motion to exceed length limitation, the record in this case is uniquely massive, and the arguments raised by the Government are fact-intensive and incorporate other parts of the record beyond the contents of its 21,000 word Response Brief itself. MacDonald respectfully requests the ability to fairly respond to the points raised by the Government.

8. Undersigned counsel has contacted Acting United States Attorney John Bruce regarding this Motion, who states the following: “The Government is opposed to the expansion of the Reply Brief and respectfully submits that the Appellant’s 13,814-word Informal Brief, 13,978-word Opening Brief, and a 7,000 word Reply Brief would be sufficient to address the points made in the Government’s 20,922 word Response Brief.”

WHEREFORE, Appellant respectfully requests that this Motion be granted, and that the word count limitation for Appellant’s Reply Brief be expanded such that Appellant be permitted to file a Reply Brief not to exceed 14,000 words.

This the 17th day of August, 2016.

/s/ Joseph E. Zeszotarski, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION was served through the electronic service function of the Court's electronic filing system, addressed as follows:

John Bruce
Acting United States Attorney
310 New Bern Avenue
Raleigh, NC 27601

This the 17th day of August, 2016.

/s/ Joseph E. Zeszotarski, Jr.
Counsel for Appellant