

UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA
 WESTERN DIVISION
 No. 75-CR-26-3
 No. 5:06-CV-24-F

UNITED STATES OF AMERICA)	
)	
v.)	RESPONSE OF THE UNITED STATES TO
)	PETITIONER’S MOTION TO EXPAND
JEFFREY R. MacDONALD)	THE RECORD
)	
)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby responds to the pleading filed March 23, 2006, captioned “Petitioner’s Motion, Pursuant to Rule 7 of the Federal Rules Governing Section 2255 Proceedings, To Expand the Record To Include The Itemized Authenticated Evidence Set Forth Herein” and in opposition there, shows unto the Court the following:

For the reasons stated more fully in the Response of the United States To Successive Motion For Relief Under 28 U.S.C. § 2255 at pages 43-49, and in the accompanying memorandum, the motion should be denied. As we explain in the accompanying memorandum the Rule is inapplicable to this case, and even if applicable, its citation here is an attempt by MacDonald to circumvent the prohibitions against recycling previous claims. In any case, MacDonald has no right to expand the record by virtue of Rule 7, which provides that “. . . the judge may direct the parties to expand the record by submitting *additional materials relating to the motion.*” (Emphasis added.) It is respectfully submitted that MacDonald has provided the Court with no valid reasons why these materials in their entirety relate to the pending motion authorized by the court of appeals. To the contrary, the procedural history of this case detailed in the Government’s Response at pages 2-22, and

in the Government's Memorandum In Support of Response of the United States Petitioner's Motion to Add An Additional Predicate, at pages 2-12, demonstrates why the record should not be so expanded.

Alternatively, we respectfully request that the Court not rule on the instant motion, until it has ruled on the Government's motion to dismiss the underlying petition based upon the Britt affidavit. In addition, we respectfully request that the Court not grant the instant motion as it relates to the inclusion of the March 10, 2006, report of the Armed Forces Institute of Pathology concerning the results of the DNA, until the Court has ruled on MacDonald's motion to add an additional predicate in his pending position, and the government's motion to dismiss or transfer to the court of appeals, based upon lack of jurisdiction. Similarly, it is respectfully requested the Court not rule on the instant motion as it pertains to the affidavits of Everett Morse, Bryant Lane and Donald Buffkin, until the Court has ruled on the government's motion to strike those affidavits.¹

Should this Court not agree with our submission that the instant motion should be denied, we respectfully request, pursuant to Rule 7, that the Court require that all materials be properly authenticated, in unedited form, and that the United States be afforded an opportunity to admit or deny their correctness. In that event, we request an opportunity to reply to the materials once properly authenticated and unedited versions have been provided, and an opportunity to present evidence in rebuttal.

¹ In the interest of judicial economy, we have included our arguments in reply to MacDonald's response to the government's motion to strike in the accompanying memorandum in lieu of filing a separate Reply Memorandum.

Respectfully submitted this 17th day of April 2006.

FRANK D. WHITNEY
United States Attorney

/s/ Brian M. Murtagh

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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 17th day of April 2006.

By: /s/ Brian M. Murtagh
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