

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 REQUEST OF MOVANT
)	
JEFFREY R. MacDONALD,)	
Movant)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby responds to the request of the movant in the above-captioned matter, and shows unto the Court the following:

1. On September 7, 2007, co-counsel for movant Jeffrey R. MacDonald ("MacDonald") wrote a letter to the Court stating that counsel for MacDonald felt compelled to advise the Court that retired U.S. Marshal Jim Britt, who had stood ready to testify in the pending habeas petition, is now suffering from serious heart problems and has spent an extended amount of time in the hospital, and that it now appears that Mr. Britt's availability for any sort of court proceeding is doubtful. See Exhibit 1 attached.

2. On November 5, 2007, co-counsel sent another letter to the Court, requesting that the Court consider holding a status conference in the above-captioned case. The stated reasons were: the unique history of the case; the complexity of the issues; and,

the fragile health of key witnesses. See Exhibit 2 attached.

3. In order that the parties' requests to the Court be in the record of the case, the Government is responding to these two letters with this filing.

4. The Government has no independent knowledge of Mr. Britt's current state of health or how it relates to his willingness or availability to testify, should it become necessary.

5. The Government does not have any information about the identity or health of any other persons counsel for MacDonald may consider to be "key witnesses." ¹

6. In addition, the Government does not know what type of relief, if any, MacDonald is seeking from the Court based upon these representations, or the proposed scope of the status conference that MacDonald is requesting. The Government respectfully suggests that if MacDonald is seeking some form of relief, the better practice would be for him to do so by motion setting forth the specific relief sought, supported by appropriate documentation. The Government would then file a specific response.

7. There are several pending motions involving the Court's jurisdiction to reach the merits of MacDonald's various claims,

¹ Besides Jim Britt, the only witnesses MacDonald has identified in his motions are Lee Tart, Wendy Rouder, Everett Morse, Bryant Lane, and Donald Bufkin. The Government has no information as to current state of the health of these individuals. If there are other witnesses who would offer evidence in support of MacDonald's collateral attacks on his conviction, the movant must identify them and submit an affidavit from them to the court of appeals, so that the evidence offered through them can be subjected to the required gatekeeping analysis under 28 USC § 2255.

including his motion to add the DNA test results as an additional, but unrelated, predicate to his § 2255 motion based on Jim Britt's affidavit. Although the Government has reserved the right, should the Court not agree with our legal and jurisdictional arguments, to contest the admissibility of the affidavits filed in support of Petitioner's motions, and to offer evidence in rebuttal, we respectfully suggest that it is premature to hold a status conference until the Court has ruled on these jurisdictional issues. Indeed, it is not in the interests of judicial economy to consider such a request unless the Court has matters about which it wishes to inquire of counsel. In that regard, there are no ongoing discussions between counsel which relate to the Court's ability to decide the pending jurisdictional issues.

8. The Government, of course, stands ready to address any questions the Court may have. Should the Court decide to hold a status conference, the Government would respectfully request that the Order scheduling such a conference delineate the scope of the hearing and any matters the Government should be prepared to address. As both parties are represented by counsel from the Washington, D.C., area in addition to counsel from Raleigh, it is

further respectfully requested that any status conference be scheduled sufficiently in advance to facilitate air travel.

Respectfully submitted, this 13th day of November, 2007.

GEORGE E.B. HOLDING
United States Attorney

/s/ Brian M. Murtagh
BRIAN M. MURTAGH
Special Assistant U. S. Attorney

/s/ John Stuart Bruce
JOHN STUART BRUCE
First Assistant United States Attorney
Eastern District of North Carolina

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 14th day of November, 2007.

By: /s/ John Stuart Bruce
First Assistant United States Attorney
Eastern District of North Carolina