

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

KARLENE GILMORE

PLAINTIFF

v.

CIVIL ACTION NO. 2:17-CV-63-KS-MTP

STATE OF MISSISSIPPI, et al.

DEFENDANTS

ORDER

This matter is before the Court on the Reply [39] to Response to Motion to Substitute Party filed by the United States of America (the “United States”). In its Reply [39], the United States introduces for the first time a Declaration [39-1] of Amos P. Parker, Jr., which details the scope of responsibilities Defendant Gregory Michel had as Installation Commander for Camp Shelby Joint Forces Training Center, Mississippi, and how those related to the All Ranks Club. The Fifth Circuit has said that a district court has discretion to rely on new evidence and arguments presented for the first time in a reply brief, but must “give the non-movant an adequate opportunity to respond prior to ruling.” *Vais Arms, Inc. v. Vai*, 383 F.3d 287, 292 (5th Cir. 2004) (quoting *S.W. Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 545 (5th Cir. 2003)). Because the Court wishes to rely on this Declaration [39-1], it finds it appropriate to give Plaintiff Karlene Gilmore an opportunity to present a sur-response, which will be limited only to this issue. Plaintiff has **7 days** from the date of this order to file her sur-response.

SO ORDERED AND ADJUDGED on this the 29th day of June, 2017.

s/Keith Starrett
KEITH STARRETT
UNITED STATES DISTRICT JUDGE