

**UNITED STATES DISTRICT COURT**  
**WESTERN DISTRICT OF NORTH CAROLINA**  
**CHARLOTTE DIVISION**  
**3:09-cv-416-RJC**  
**(3:06-cr-87-RJC)**

**LARRY DUNLAP FRAZIER,** )  
) )  
**Petitioner,** )  
) )  
**vs.** ) )  
) )  
**UNITED STATES OF AMERICA,** )  
) )  
**Respondent.** )  
) )  
\_\_\_\_\_ )

**ORDER**

This matter is before the Court on Petitioner’s Motion for Extension of Time, (Doc. No. 18), within which to file a Reply to the Government’s Response in Opposition to Petitioner’s Motion to Vacate, filed on September 23, 2009, pursuant to 28 U.S.C. § 2255; and on Petitioner’s Motion to Expand the Record in Support of the Motion to Vacate, (Doc. No. 16).

First, Petitioner seeks an Order from the Court allowing him to expand the record, under Rule 7 of the Rules governing Section 2255 proceedings, so that he can file a Declaration under penalty of perjury to attest to certain factual allegations outside the record. (Doc. No. 16 at 2). Petitioner states that his failure to attach a sworn Declaration to his Motion to Vacate was an oversight; that there will be no new allegations arising under Petitioner’s Declaration; and that he wishes to file his Declaration for the sole purpose of submitting his allegations under oath so as to make them admissible in this proceeding.<sup>1</sup> (Id.).

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<sup>1</sup> Petitioner signed his original Motion to Vacate under penalty of perjury, but he did not sign his subsequent motions to amend under penalty of perjury. See (Doc. Nos. 1; 6; 7). Therefore, it appears that the allegations to which he refers are those allegations made in his two motions to amend.

The Court grants Petitioner's Motion to Expand the Record, but only under the conditions sought in the Motion to Expand. That is, if Petitioner makes any new allegations not in the original Motion to Vacate, or in the subsequent arguments made in his two Motions to Amend, the Court will not consider them when reviewing the Government's Response to the Motion to Vacate.

Next, Petitioner seeks an additional 60 (sixty) days in which to file his Reply to the government's response to the Motion to Vacate. The Court notes that this action was filed in 2009. Given the age of the case, this Court is not inclined to extend Petitioner's deadline sixty (60) days. The Court will grant the motion for extension of time to the extent that Petitioner shall have up to September 24, 2012, in which to file his Reply.

**IT IS, THEREFORE, ORDERED THAT:**

- (1) Petitioner's Motion to Expand the Record, (Doc. No. 16), is **GRANTED**. The additional evidence that Petitioner seeks to add in his Motion to Expand the Record shall be due no later than September 24, 2012.
- (2) Petitioner's Motion for Extension of Time, (Doc. No. 18), is **GRANTED** to the extent that Petitioner shall have up to September 24, 2012, in which to file his Reply to the Government's Response to the Motion to Vacate.

Signed: September 13, 2012



Robert J. Conrad, Jr.  
Chief United States District Judge

