

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

**UNITED STATES OF AMERICA**

**APPELLEE**

**V.**

**CASE NO. 18-3057**

**JONATHAN E. WOODS**

**APPELLANT**

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**MOTION FOR EXTENSION OF TIME TO FILE BRIEF AND OTHER  
RELIEF**

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Comes now, Appellant Jonathan E. Woods, through his attorney, Patrick Benca, and for his Motion states:

1. Appellant's Opening Brief and Appendix are due on February 19, 2019.
2. Counsel for Appellant has become aware of newly discovered evidence that would support a motion for a new trial as outlined in Rule 33(b)(1) and *United States v. Smith*, 62 F.3d 1073, 1078 (8<sup>th</sup> Cir. 1995). This rule further provides that the district court may not grant this motion until this Court remands the case. *Id.*
3. On February 4, 2019, Appellant's Woods and Shelton filed a Joint Motion to Review Sealed Documents for Purposes of Preparing Appellant's Brief on Appeal. The motion addressed documents that were made part of the record via

*ex parte* pretrial submissions and hearings. The next day, the Clerk directed the government to file a response to Appellant's Motion by February 14, 2019.

4. On February 7, 2019, the defense reviewed a filing in the Eastern District of Arkansas, *United States v. Jeremy Hutchinson*, Case No. 4:18CR-00450 KGB [DCD 21] In it, Mr. Hutchinson makes allegations that, if true, were material to Appellant's defense at his trial in this matter. Prior to this review, Appellant was not provided with the information alleged to be true in the pleading and the record clearly established that diligence was utilized by the both defense teams in the discovery process.

5. On February 14, 2019, the government herein responded to Woods request to review the exhibits. In it the government acknowledged that one of the *ex parte* submissions in Woods pertained to most of the material outlined in the *Hutchinson* filing, specifically DCD 207. This material was submitted on November 21, 2017 and the circuit court to be not discoverable to defense on November 29, 2017. [DCD 213] To this date, defense counsel has not seen these documents. The government now has no objection to being release subject to public redaction.

6. Defense counsel has reason to believe that some of the privileged information that Mr. Hutchinson provided to the FBI included exculpatory

information as to Mr. Woods that was either not included or was later removed from Hutchinson's witness interview report, or FBI 302.

7. Woods is requesting ten-day extension to file his Opening Brief and Appendix. Within this time frame Woods will file appropriate motions both to stay the briefing schedule and to remand the matter to the district court to settle the record.

8. This motion is not for the purpose of delay, but to ensure that Woods has addressed all issues diligently and made an appropriate record for this Court's review and consideration.

WHEREFORE, an extension of time until February 19, 2019 is hereby sought.

JONATHAN E. WOODS

/s/ Patrick Benca

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#### CERTIFICATE OF SERVICE

I, Patrick Benca, hereby certify that I have served a copy of the foregoing to all counsel of record through the electronic filing system this 18<sup>th</sup> day of February, 2019.

/s/ Patrick Benca  
PATRICK BENCA

CERTIFICATE OF COMPLIANCE

I hereby certify that on this 18<sup>th</sup> day of February, 2019, and pursuant to the Eight Circuit Court of Appeals' Local Rule 28(A)(h)(2) that Appellant's Motion for Extension of Time to File Brief was scanned for viruses and the Motion is virus-free.

Pursuant to Fed. R. App. P. 27(d), 32(7)(C), 32(a)(5), 32(a)(6) this Motion has been prepared in a proportionally spaced typeface using Word 2016 and contains 437 words of Times New Roman font with a font point size of 14.

/s/ Patrick Benca  
PATRICK J. BENCA