

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

SHOLOM RUBASHKIN,

Movant,

vs.

UNITED STATES OF AMERICA.

No. 13-CV-1028-LRR

No. 08-CR-1324-LRR

**ORDER REGARDING  
MOTION TO DISMISS &  
MOTION TO AMEND**

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The government’s motion to dismiss ground three (civil docket no. 5) and Sholom Rubashkin’s motion to amend (civil docket no. 27) are the matters before the court. The government filed its motion to dismiss ground three on November 22, 2013 and Sholom Rubashkin (“the movant”) filed his motion to amend on March 18, 2014. With respect to the government’s motion to dismiss ground three, the movant filed a resistance (civil docket no. 16) on January 30, 2014. The government subsequently filed a reply (civil docket no. 23). Concerning the movant’s motion to amend, the government filed a resistance (civil docket no. 36) on April 15, 2014. The movant subsequently filed a reply (civil docket no. 41).

In his motion pursuant to 28 U.S.C. § 2255, the movant originally asserted the following: (1) the government (i) failed to disclose exculpatory information concerning actions it took to influence the trustee overseeing Agriprocessors’ bankruptcy and prospective parties looking to buy Agriprocessors during bankruptcy proceedings and (ii) presented inaccurate testimony during the sentencing hearing; (2) the government failed to disclose material, favorable facts concerning pre-enforcement action communications and, consequently, defense counsel failed to timely seek disqualification based on the

appearance of bias; and (3) the government failed to disclose exculpatory information concerning the purpose of transferring money among accounts. *See generally* Motion Pursuant To 28 U.S.C. § 2255 (civil docket no. 3). In comparison, the movant's motion to amend expands upon ground three. Specifically, it identifies an individual that provided information to the government and provides the substance of such information. The movant's proposed amendment sufficiently relates back to ground three of his original motion pursuant to 28 U.S.C. § 2255. *See United States v. Craycraft*, 167 F.3d 451, 457 (8th Cir. 1999) (concluding an otherwise untimely amendment to a 28 U.S.C. § 2255 motion does not relate back to a timely filed motion when the original claims are distinctly separate from the claims in the amendment); *see also Mandacina v. United States*, 328 F.3d 995, 999-1000 (8th Cir. 2003) (citing *Craycraft*, 167 F.3d at 457); *Moore v. United States*, 173 F.3d 1131, 1135 (8th Cir. 1999) (discussing *Craycraft*, 167 F.3d at 456-57). Accordingly, the movant's motion to amend (civil docket no. 27) is **GRANTED** and the movant's motion to dismiss ground three (civil docket no. 5) is **DENIED** as moot.

Consistent with the court's December 10, 2013 order, the parties' deadlines are as follows:


- (1) The movant is **DIRECTED** to file a merits brief within 60 days of the date of this order.
- (2) The government is **DIRECTED** to file a responsive brief within 60 days of the date that the movant files his merits brief.
- (3) The movant is **DIRECTED** to file a reply brief within 30 days of the date that the government files its responsive brief.

No extension of the briefing schedule will be granted unless extraordinary circumstances

exist.

**IT IS SO ORDERED.**

**DATED** this 20th day of January, 2016.



LINDA R. READE  
CHIEF JUDGE, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA