No. 20-2182

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

DEBRA JONES, as personal representative of the Estate of Todd R. Murray, deceased, for and on behalf of the heirs of Todd R. Murray, ARDEN C. POST, individually and as the natural parents of Todd R. Murray,
Plaintiffs-Appellants

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION,
Plaintiff

v.

UNITED STATES,
Defendant-Appellee

On Appeal from the United States Court of Federal Claims
in Case No. 1:13-cv-0227, Judge Richard A. Hertling

PLAINTIFFS-APPELLANTS' CORRECTED REPLY BRIEF

Jeffrey S. Rasmussen
Frances C. Bassett
Patterson Earnhart Real Bird & Wilson LLP
1900 Plaza Drive
Louisville, CO 80027
T: 303.926.5292; F: 303.926.5293
Attorneys for Plaintiffs-Appellants

Oral Argument Requested.

TABLE OF CONTENTS

CONTENTS

TABLE OF AUTHORITIES iii

SUMMARY OF THE ARGUMENT 1

ARGUMENT 3

I. The CFC order granting summary judgment is contrary to this Court's mandate, and Contrary to the Law of Collateral Estoppel, and Therefore must be Vacated. 3

II. The United States had the duty to preserve the significant evidence at the scene of the officer-involved homicide that the United States was investigating. 6

A. The United States did take legal possession of the .380 gun, Mr. Murray's body, and all of the evidence on both. 7

B. The United States had control over all evidence at the crime scene, and its failure to collect any of the major pieces of evidence constitutes spoliation. 8

III. Federal FBI agents are not exempt from the spoliation standards that apply to every other person in this country. 9

A. The established law of spoliation applies, and that law establishes which items of evidence must be preserved. 9

B. The United States' citations of criminal due process case law is misplaced and the United States' interpretation of those cases is wrong. 14

IV. Because of the United States spoliation of all of the substantial evidence in this case, the spoliation sanction will, of necessity, result in the United States being liable for the death of Mr. Murray 17

CONCLUSION 18

CERTIFICATE OF SERVICE 20

CERTIFICATE OF COMPLIANCE 20

TABLE OF AUTHORITIES

Page(s)

Cases

Arizona v. Youngblood,
488 U.S. 51 (1988) 15, 16
Browder v. City of Albuquerque,
187 F. Supp. 3d 1288, 1298 (D.N.M. 2016) 11
California v. Tombetta,
467 U.S. 479 16
Chapman Law Firm LPA v. United States,
113 Fed. Cl. 555 6
G*oodman v. Praxair Servs. Inc.*,
632 F. Supp. 2d 494 (D. Md. 2009) 9, 10, 11
Green v. United States,
386 F.2d 953 (10th Cir. 1967).. 9
Hollingsworth v. United States,
321 F.2d 342 (10th Cir. 1963).. 9
Jones v. Norton,
3 F. Supp. 3d 1170 .... 4, 5
Jones v. United States,
846 F.3d 1343 (Fed. Cir. 2017).. 18
Rivera v. Sams Club Humacao,
386 F. Supp. 3d 188 (D.P.R. 2018).. 9, 10, 12

Rules

Fed. R. App. P. 32(a)(7)(C) 20
Fed. R. Civ. Proc. 56(c) 5
Fed. R. Evid. 401(a)(b) 12

SUMMARY OF THE ARGUMENT

1. This Court provided a clear mandate to the Court of Federal Claims (CFC):

> If it determines that sanctions are appropriate and do change the evidentiary landscape, the CFC should *independently* consider Jones's substantive allegations of bad men violations.

Id. (emphasis added).

The condition in the mandate was met. The CFC imposed an evidentiary spoliation sanction. It held that the United States could not rely upon facts related to the .380 handgun—i.e., the gun that United States claims fired the fatal shot into the back left side of Mr. Murray's head. On appeal, the United States now states it agrees that the spoliation order was correct: it did spoliate that gun. U.S. Resp. Br. 18.

Based upon this Court's prior mandate, the first issue presented is therefore very simple. Did that spoliation order change the evidentiary landscape?

The simple answer is that it did, *res ipsa loquitor*. The .380 gun was one of the two most important pieces of evidence in the case.

In its response brief, the United States is forced to defend the argument that it made to the CFC and with which the CFC surprisingly agreed. The U.S. asserts that the evidentiary spoliation order did not change the evidentiary landscape. The U.S. must lose on that argument, and therefore this Court must order the CFC to

independently evaluate the evidence. The CFC cannot continue to rely on the Utah Court's findings and conclusions.

2. The second primary issue presented in this appeal is whether the United States had the duty to collect obvious important evidence when it is investigating an officer-involved homicide.

In its response brief, the United States continues to assert that its law enforcement officers are the only people or entities in this country who do not owe to the people of the United States and the Courts the same spoliation duty which every other person owes.

As with the first issue presented, the United States is forced into its untenable and radical argument by the prior decisions in this case. At the United States' urging, the CFC issued a blanket *legal* holding that a law enforcement officer in control of a crime scene has no duty whatsoever to collect any of the major pieces of evidence of a homicide, and therefore the officer's decision to not take possession of the possible murder weapon, or not to test that weapon for Mr. Murray's blood, was not spoliation.

The CFC was wrong. Literally every other spoliation case is contrary to the CFC's decision. This Court therefore must vacate the CFC order.

3. The third issue presented is whether the sanction for the failure to preserve the obvious core evidence in the case should, as either a legal or practical

matter, result in remand with instructions that the United States is liable for Mr. Murray's death. That is the only possible remedy under the current facts.

ARGUMENT

I. THE CFC ORDER GRANTING SUMMARY JUDGMENT IS CONTRARY TO THIS COURT'S MANDATE, AND CONTRARY TO THE LAW OF COLLATERAL ESTOPPEL, AND THEREFORE MUST BE VACATED.

This Court provided a clear mandate to the Court of Federal Claims (CFC).

> If it determines that sanctions are appropriate and do change the evidentiary landscape, the CFC should *independently* consider Jones's substantive allegations of bad men violations.

Id. (emphasis added).

The CFC imposed an evidentiary spoliation sanction. It held that the United States could not "rely upon any facts related to the .380 handgun [] to support the United States' conclusion that Mr. Murray died by suicide." Appx19. The United States now, belatedly, concedes that the spoliation order was correct. U.S. Resp. at 18.

As it did in the CFC, the United States asserts that the evidentiary spoliation order regarding *one of the two primary pieces of evidence in this case* somehow did not change the evidentiary landscape. Wholly based upon and dependent upon that assertion, the United States argues that the CFC's refusal to independently consider the evidence was not a violation of this Court's clearly stated mandate. The United States is plainly wrong. As the Murray Family stated in its opening brief, reasonable attorneys can debate *how much* the spoliation order changed the evidentiary

landscape, but that is not the issue presented. Instead, because this Court mandated that if the spoliation order changed the evidentiary landscape, the CFC was required to independently evaluate the evidence. Based upon that mandate, the United States had to either concede this case or argue that the spoliation order did not change the evidentiary landscape *at all*. It should have conceded. Instead, it argues that the spoliation order did not change the evidentiary landscape at all.

The United States' argument is succinctly captured by the United States' response brief, in which it writes: "That Court [the United States District Court for the District of Utah] (*without relying on any evidence with the spoliated gun*) found that Mr. Murray died from a close-contact gunshot wound (a gun placed against his head) and that officer Norton was nowhere near Mr. Murray when the fatal shot was fired." U.S. Resp. at 2 (emphasis added). *See also id.* at 16 (inexplicably and incorrectly claiming that "the gun was not part of the evidence weighed by the Utah district court").

Of course the District Court relied on the spoliated gun. It held that the .380 gun fired the shot into Mr. Murray's head, it held that Mr. Murray had been in possession of the spoliated gun, and that Mr. Murray had used the gun to kill himself. The District Court's summary judgment order was replete with references to that gun. The order cited Norton's testimony that Mr. Murray had shot himself with the spoliated gun. *Jones v. Norton*, 3 F. Supp. 3d 1170, 1180-81; 1189. It cited Officer

Byron's testimony regarding the gun. *Id.* at 1182; 1194. It cited Dr. Leis' testimony that Mr. Murray had shot himself with the gun. *Id.* at 1184; 1190.

The District Court also expressly stated that it found Norton's story credible because "independent evidence discussed above supports Detective Norton's version of events." *Id.* at 1191-92. That "independent evidence," as relied on by the District Court, included the spoliated gun that the United States cannot rely upon to support Norton's version of events.

Moreover, the District Court's decision was necessarily based upon the full record submitted by the parties on the summary judgment motion, Fed. R. Civ. Proc. 56(c), which included substantial discussion of the spoliated gun. The District Court record contained numerous pictures of the gun. *E.g.*, Appx935-36 (D.Ct. Dkt 272-11). It included deposition testimony, Appx926-930 (D.Ct. Dkt. 272-9), and a medical report concluding that Mr. Murray "[s]hot himself with a .380 handgun." Appx907-911 at 908(D.C. Dkt. 278-13). *See also* Appx931-34 (D.Ct. Dkt. 272.-10). It contained documents seeking to connect the gun to Mr. Murray. Appx912-925 (D.Ct. Dkt. 272-7). It contained testimony by Norton himself that Mr. Murray used the gun to shoot himself. Appx899-906 (D.Ct. Dkt. 278-3). Etc., etc. That is exactly why the CFC could not rely upon that District Court's holding, and why it was required, as the law of this case and based upon the mandate of this Court, to re-weigh the evidence. Under the mandate, the CFC did have to decide the merits issue

without relying on the spoliated gun. However, it did not do so and its decision must be reversed.

II. The United States had the duty to preserve the significant evidence at the scene of the officer-involved homicide that the United States was investigating.

In Section I.A of its brief, the United States acknowledges that when litigation is reasonably foreseeable, every person (including the United States and its law enforcement officers) has a duty to preserve evidence that is "within the party's *control* or possession." U.S. Resp. at 19 (citing *Chapman Law Firm LPA v. United States*, 113 Fed. Cl. 555, 609-10, *Aff'd* 583 F. App'x 915 (Fed. Cir. 2014)) (emphasis added).

But in Section I.B.1 of its response brief, the United States argues in support of the CFC's legal holding that even when all the other elements of spoliation are met, law enforcement officers do not have the duty that everyone else in the United States has—to preserve evidence within its possession and control. The United States asserts that this duty does not apply even when the FBI is the mandatory investigative agency, its officers are investigating an officer-involved homicide in which there is no video, no audio, and there is no living witness other than the officer who was involved. The United States asserts that the duty to preserve evidence does not apply to one of the two most important pieces of evidence in the case, a piece of evidence that may well have been, by itself, dispositive.

There are at least two legal flaws with the United States' argument.

A. The United States did take legal possession of the .380 gun, Mr. Murray's body, and all of the evidence on both.

The first flaw is narrow, but very simple. The United States did take possession of the .380 gun and it did take legal possession of Mr. Murray's body. Opening Br. §III.B. The United States now, belatedly, admits that it spoliated that gun by destroying the gun. But that concession also necessarily means that the United States did not merely fail to collect evidence on the gun. It went the next step and destroyed that evidence when it actually knew litigation was expected. Opening Br. at 18. The United States has no response to the Murray Family's discussion of the CFC's simple and plain error on that issue. This Court must reverse on that issue. Because the gun was spoliated, the evidence that was on that gun was also spoliated.

Similarly, the United States had legal possession of Mr. Murray's body, and it exercised authority over that body, by ordering an autopsy. But the United States

then allowed nearly all the evidence on that body to be destroyed. Opening Br. at 18. This Court must reverse and hold that the United States spoliated that evidence.[1]

B. THE UNITED STATES HAD CONTROL OVER ALL EVIDENCE AT THE CRIME SCENE, AND ITS FAILURE TO COLLECT ANY OF THE MAJOR PIECES OF EVIDENCE CONSTITUTES SPOLIATION.

Second, the United States asserts that because it did not take possession of Norton's gun or clothing, it did not spoliate those items. That argument is an overly transparent misstatement of the legal issue presented. As the United States had admitted only one page earlier in its own brief, the legal standard is control *or* possession. As the Murray Family stressed in its opening brief, the United States did spoliate Norton's gun and clothing because the United States was the mandatory investigative agency, and it took *control* over the crime scene when that crucial evidence was at the scene. Opening Br. §III.C (citing Appx. 25). The United States had control of the crime scene, the guns, and the body.

---

1 In its response brief, the United States asserts that because the State of Utah did not comply with the order for an autopsy, the United States is not liable for the spoliation caused by the lack of an autopsy. That argument is wrong. It could well be that both the State of Utah and the United States were liable for the spoliation, but the issue in this case is whether the United States is liable; and the pivotal issue is whether the United States had control of Mr. Murray's body, and then whether the evidence was spoliated.

Although not explicitly stated, the United States presumably would also assert it was not responsible for the failure to preserve any admissible blood samples from Mr. Murray's body; and such assertion would similarly fail.

III. FEDERAL FBI AGENTS ARE NOT EXEMPT FROM THE SPOLIATION STANDARDS THAT APPLY TO EVERY OTHER PERSON IN THIS COUNTRY.

A. THE ESTABLISHED LAW OF SPOLIATION APPLIES, AND THAT LAW ESTABLISHES WHICH ITEMS OF EVIDENCE MUST BE PRESERVED.

In Section I. B (2) of its brief, the United States repackages the arguments discussed above in a slightly different manner. It asserts that the CFC was correct when it held, as a matter of law, that FBI agents do not have an "obligation to collect any particular evidence" regarding the homicide. That holding is literally contrary to every other case on spoliation. Every spoliation case is based upon a party failing to preserve "particular evidence," and the existing law governing spoliation already contains the standard that determines when the duty to preserve "particular evidence" kicks in. That standard already accounts for the importance of the spoliated evidence, whether there is other extant evidence that mitigates the prejudice of the spoliated evidence, and other factors. *E.g.*, *Rivera v. Sams Club Humacao*, 386 F. Supp. 3d 188 (D.P.R. 2018); G*oodman v. Praxair Servs., Inc.,* 632 F. Supp. 2d 494, 517 n.12 (D. Md. 2009).

Like every other person and entity in this country, the United States has the duty to preserve substantial evidence in its possession or control. Opening Br. at 16, (citing *Green v. United States*, 386 F.2d 953, 956 (10th Cir. 1967) (citing *Hollingsworth v. United States*, 321 F.2d 342, 352 (10th Cir. 1963)). Where, as here, it failed to do so, it must accept the legal consequence of its wrongful action.

The United States next makes a straw man argument that the United States is not aware of any case which requires it to "to collect *every* piece of potential evidence that might conceivably be used in future litigation." Resp. Br. At 23 (emphasis added). *See also id.* at 15. That statement is, of course, correct; but on the other side, and as is material here, it is also true that, like every other person and entity in our country, the United States has the duty to preserve the substantial relevant evidence. In every spoliation case, the spoliator could make the exact same argument the United States is making—that because it did not have the duty to preserve "*every* piece of possible evidence," it did not have a duty to preserve *any* piece of evidence. Where, as here with Norton's gun, clothing, and other pieces of important evidence, when that important relevant evidence is not preserved, the courts impose spoliation sanctions. *E.g.*, *Rivera*, 386 F. Supp. 3d 188; G*oodman,* 632 F. Supp. 2d 494.

In *Rivera*, Rivera was allegedly injured, ultimately causing death, when a patio swing on display at Walmart apparently collapsed. Rivera's next of kin brought suit and then moved for spoliation sanctions because Walmart: 1) had not retained video footage from its security cameras, and 2) had not retained the swing. Like the United States here, Walmart claimed it did not have a duty to preserve either of those "particular pieces of evidence," because it had decided the evidence was not of value. It claimed it had not spoliated the security footage because its own agents

had reviewed all of that footage and had determined the video did not show the accident. The Court held that a jury could well conclude that the video was spoliated. Walmart claimed it had not spoliated the swing because "Plaintiff does not know what caused the accident," and Plaintiff was therefore only speculating that the swing was defective. Walmart further stated that the swing was not of evidentiary value because its manager had inspected the swing after the accident and the manager had concluded the swing was "in perfect condition." The Court correctly rejected that argument, holding that Walmart's "[i]nterpretation of the spoliation rule swallows the purpose of the rule." The Court further noted that "the swing's relevance is glaringly obvious." *Id.* at 203. It held a jury could conclude that Walmart's failure to preserve the swing was bad faith spoliation. *See also Goodman* 632 F. Supp. 2d 494, 517-18 (holding that the defendant's failure to preserve relevant evidence from "key players" was spoliation, but that failure to preserve some secondary evidence would not be spoliation); *Browder v. City of Albuquerque*, 187 F. Supp. 3d 1288, 1298 (D.N.M. 2016).

Similarly, in the present case, it was glaringly obvious that the two guns were relevant, as was Norton's clothing and other evidence. Just like Walmart, the United States cannot avoid spoliation sanctions based upon its claim that the glaringly obvious evidence would not be of value to the decedent's family. Similarly, this Court must reject the United States' shocking and offensive assertion that the Federal

Bureau of Investigation (FBI) agent did not spoliate the evidence because the "FBI did not determine that it was relevant to the investigation of Mr. Murray's death." As the Court in *Rivera* correctly stated, that "[i]nterpretation of the spoliation rule swallows the purpose of the rule."

Additionally, as discussed in the Murray Family's opening brief, every expert in this case (including an FBI's agent who the United States hand-picked as its expert) acknowledge that the guns and evidence on them, and Norton's clothing and evidence on them, were evidence; and conceding that these items were potentially dispositive evidence. Opening Br. 19.

Finally, there is absolutely no factual basis for the United States' shocking assertion. For example, there is *no evidence* that the FBI "did not determine the gun was relevant to the investigation," and it is similarly obvious that no reasonable FBI agent could have determined that the gun was not relevant. As this Court knows, evidence is relevant if "(a) it has a tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401(a)(b). Here, for example, Norton's gun was potentially dispositive evidence, either in his favor or in favor of the Murray Family. The gun was obviously relevant.

As the Court in *Rivera* stated, a party cannot avoid spoliation sanctions based upon its assertion that the movant cannot be sure what the spoliated evidence would

show. Instead, the primary factor determining prejudice is what the spoliated evidence could have shown; and the adverse consequence from destruction of significant evidence must be placed on the spoliator. The United States' failure to preserve the major pieces of evidence at the crime scene is the violation of the law of spoliation, not the justification for avoiding spoliation sanctions.

Whether evidence is sufficiently relevant to require preservation can, in some fact scenarios, be difficult to determine. But in the current fact scenario it is simply not difficult. One of the two guns at the scene fired the fatal shot. Both guns were obviously relevant evidence, and therefore had to be preserved. Relatively simple testing of the guns for blood or tissue would have been strong evidence, and likely would have been dispositive evidence of whether Officer Norton shot Mr. Murray and then lied about it to protect himself, or whether Mr. Murray shot himself. The guns were the two most important pieces of evidence. Similarly, Norton's clothing was obviously relevant evidence. It would either contain Mr. Murray's blood (in which case any reasonable fact-finder would conclude Norton was the killer) or it would not (in which case, unless the evidence from the guns showed otherwise, any reasonable juror would conclude Norton was not the killer.)

More significantly for current purposes, the CFC did not dispute that the guns and clothing were obvious, relevant evidence. Instead, it based its decision on an incorrect determination of law, which this court reviews de novo. It held that the

FBI agents could not be responsible for spoliation because they had no legal duty to take and preserve any of the evidence that was within their control. It is that legal holding which is before this Court; and the CFC's legal holding is contrary to every single case regarding spoliation.

B. THE UNITED STATES' CITATIONS OF CRIMINAL DUE PROCESS CASE LAW IS MISPLACED AND THE UNITED STATES' INTERPRETATION OF THOSE CASES IS WRONG.

To attempt to support is incorrect argument that FBI agent have no duty to collect the obvious and primary evidence at a crime scene, the United States cites to cases in which courts have held that a criminal defendant cannot have a conviction reversed based solely on a showing that law enforcement did not preserve evidence that might have been exculpatory.

This Court should apply the directly applicable civil case law of spoliation, not criminal case law, but the Murray Family notes that the criminal case law does not support the United States' radical request for a new and broad civil immunity for federal officers. Contrary to the United States' argument, this Court is not faced with an either/or issue, and courts in criminal cases are also not faced with an either/or issue. It is not, as the United States asserts, that this Court must choose between a rule that officers must collect every piece of possible exculpatory evidence, or a rule that they have no duty to collect any evidence.

In support of its either/or argument, the United States relies upon *Arizona v. Youngblood,* 488 U.S. 51 (1988) and cases with similar holdings. The short concurring opinion by Justice Stevens in *Youngblood* shows the error in the United States' argument. To understand the severity of the United States misstatement of *Youngblood*, the Court needs to have a thorough understanding of the facts in that case.

In *Youngblood*, the defendant abducted a ten-year-old, held the child hostage for 90 minutes, and repeatedly sexually assaulted the child. After the child was released, he was examined for sexual assault, using a sexual assault kit. The police collected the child's clothing, but did not refrigerate the clothing. About a week after the assault, some of the evidence was tested, and the test confirmed the child had been sexually assaulted by a man.

Nine days after the assault, the child picked the defendant out of a photographic lineup.

The state sought to compel the defendant to provide blood and saliva samples, but that motion was denied. The state then sought to test evidence collected during the post-assault examination, to determine the assailant's blood group, but blood group could not be obtained from the small samples.

Once he knew blood group could not be determined from the samples, defendant asserted that if some of the samples from the sexual assault kit had been

immediately tested, they might have established the perpetrator's blood group; and that if the clothing had been refrigerated, later testing might have established blood group. He asserted that solely because of the possibility that the blood group evidence might have exonerated him, the charges had to be dismissed outright. The trial court rejected that argument, but the court instruct that the jury could impose an adverse inference against the state.

The jury convicted the defendant, but the state court of appeals reversed the conviction and remanded for dismissal of all charges. The Supreme Court then reversed the state appellate court.

Justice Stevens wrote a concurring opinion in order to stress that the interpretation of *Youngblood* that the United States now makes in this case is incorrect. Justice Stevens quoted the holding in *California v. Tombetta*, 467 U.S. 479, that the duty to preserve evidence is "limited to evidence that might be expected to play *a significant role in a suspect's defense,*" (emphasis added). He concluded that the possible blood group evidence at issue in *Youngblood* did not rise to that level of significance. He further emphasized that the jury had been given an adverse inference instruction, but that the jury verdict convicted the defendant.

In the case before this Court, we are not dealing with a relatively small piece of evidence. We are instead dealing with the core, immediately obvious, pieces of evidence—evidence that would likely have established who shot Mr. Murray to

death. The civil law cases governing spoliation account for the importance of the evidence, the scope of the spoliation sanction, and other factors. There is no need to turn to the criminal law cases in which a defendant seeks a dispositive sanction, but those cases show that in both civil and criminal cases the law establishes a middle ground, between the two extremes that the United States asks this Court to choose between. This Court should, like all other courts in civil spoliation cases, choose that middle ground.

IV. BECAUSE OF THE UNITED STATES SPOLIATION OF ALL OF THE SUBSTANTIAL EVIDENCE IN THIS CASE, THE SPOLIATION SANCTION WILL, OF NECESSITY, RESULT IN THE UNITED STATES BEING LIABLE FOR THE DEATH OF MR. MURRAY.

In the current case, the CFC held that the United States cannot rely upon the .380 handgun. The United States does not challenge that holding. As either a legal or a practical matter, that alone must result in the United States being liable for Mr. Murray's death. As the Murray Family discussed in its opening brief, the United States cannot rely on facts related to that handgun; therefore it cannot show that Mr. Murray shot himself with that gun. As discussed above, this Court should additionally hold that the United States spoliated all of the other major evidence in this case, which would redundantly result in the United States being liable for the death of Mr. Murray.

Mr. Murray was killed. There was only one living witness, and that witness, predictably, claims he did not cause the killing. His uncorroborated story is dubious

at best. The United States, the investigative agency, decided not to collect any of the obvious evidence at the scene—the evidence that would either have proven or disproven that Norton shot Todd Murray, resulting in Mr. Murray's death. As the United States admits, the spoliation sanction must be commensurate with the harm. The harm here is obvious. As this Court previously stated:

> *But for the destruction of the cited evidence, Jones may have shown that Murray was, in fact, shot by Norton.*

Jones v. United States, 846 F.3d 1343, 1363 (Fed. Cir. 2017) (emphasis added). This Court should remand with instructions to impose spoliation sanctions which re-level the playing field.

CONCLUSION

For all of the reasons discussed above, this Court should vacate the CFC decision, should again direct the CFC to comply with this Court's prior mandate, and should direct the CFC to hold that the United States spoliated the other major evidence in this case, and that the United States must accept the consequences of those errors and must therefore accept financial responsibility for the death of Mr. Murray.

Dated: April 21, 2021

/s/ Jeffrey S. Rasmussen
Jeffrey S. Rasmussen
Frances C. Bassett
Patterson Earnhart Real Bird & Wilson LLP
1900 Plaza Drive
Louisville, CO 80027
jrasmussen@nativelawgroup.com
fbassett@nativelawgroup.com
T: 303.926.5292; F: 303.926.5293
Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April 2021, I caused the foregoing Plaintiffs-Appellants' Reply Brief to be filed with the Clerk of Court for the United States Court of Appeals for the Federal Circuit using the CM/ECF System, with service to all parties through that system.

April 21, 2021

/s/ Jeffrey S. Rasmussen
Jeffrey S. Rasmussen
Attorney for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

As required by Fed. R. App. P. 32(a)(7)(C), I certify that this brief complies with the type-volume limitations of the federal rules of civil procedure and the federal circuit rules because it was prepared using a proportionally-spaced typeface and includes 4272 words.

April 21, 2021

/s/ Jeffrey S. Rasmussen
Attorney for Plaintiffs-Appellants