APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. SAMUEL COHEN, a.k.a. MOULI COHEN, Defendant-Appellant.	No. 15-10274 D.C. No. 3:10-cr-00547-CRB-1 MEMORANDUM* (Filed Mar. 29, 2017)

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted January 10, 2017**
San Francisco, California

Before: WALLACE and M. SMITH, Circuit Judges, and ERICKSON,*** District Judge.

Samuel Cohen appeals from the district court's order denying his motion for a new trial pursuant to

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes that this case is suitable for decision without oral argument. *See* Fed. R. App. [P]. 34(a)(2).

*** The Honorable Ralph R. Erickson, United States District Judge for the District of North Dakota, sitting by designation.

Rivera-Guerrero, 426 F.3d 1130, 1139 (9th Cir. 2005). The district court correctly determined that even if Cohen were to uncover the "newly discovered" evidence he was seeking, it would still be cumulative in nature, merely impeaching, and likely inadmissible.

Cohen's two motions for leave to supplement the record on appeal are also denied. The evidence, consisting of a report by Professor Sterling Harwood, and declarations made subsequent to the district court's hearing on the motion for a new trial, is cumulative and, at best, impeaching. Cohen has not provided this court with sufficient reasons for deviating from the requirements of Federal Rule of Appellate Procedure 10(a). *See United States v. Boulware*, 558 F.3d 971, 976 (9th Cir. 2009) (recognizing that "except in extraordinary circumstances" the court "will not allow parties to supplement the record on appeal"); *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003) ("Save in unusual circumstances, we consider only the district court record on appeal."). The Government's motions to strike are denied as moot.

AFFIRMED.

The petition for panel rehearing and the petition for rehearing en banc are DENIED.[1]

[1] Cohen filed citations of supplemental authority under Fed. R. App. P. 28(j). The first case he cites, *United States v. Slatten*, No. 15-3078, 2017 WL 3318837 (D.C. Cir. Aug. 4, 2017), is of no consequence to his request for review by the panel or en banc as nothing has been developed in the record to indicate Hari Dillon ever engaged in conduct inconsistent with either his testimony or his plea colloquy. There is nothing in the record that Dillon committed acts that were falsely attributed to Cohen at trial. Instead, the totality of the record reflects that Dillon took responsibility for his own acts and described acts attributable to Cohen. This is a clearly distinguishable factual footing than that in *Slatten*. Cohen's additional citations of supplementary authority, *Jackson v. Brown*, 513 F.3d 1057, 1071 (9th Cir. 2008) and *U.S. v. Davis*, 960 F.2d 820, 825 (9th Cir. 1992) are also of no help and merely repeat rationale of authority already addressed by the panel.

TO THE CLERK OF COURT, PARTIES AND COUNSEL:

The defendant having applied and good cause appearing for the relief sought,

IT IS ORDERED that the motion for new trial and motion to recuse presently set for May 20, 2015 are continued to _____, 2015, and the defendant's reply briefs are due on _____, 2015.

Dated: May 8, 2015

_____
Honorable Charles R. Breyer
United States District Judge

UNITED STATES DISTRICT COURT

DENIED

/s/ Charles R. Breyer

Judge Charles R. Breyer

NORTHERN DISTRICT OF CALIFORNIA