

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH MICHAEL LOPEZ,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

Case No: 10-00320-15-CR-W-DGK

**SUGGESTIONS IN OPPOSITION TO THE MOTION OF THE
UNITED STATES FOR REVOCATION OF BOND**

Defendant, Joseph Michael Lopez, for his suggestions in opposition to the Government's motion for revocation of bond, respectfully states:

INTRODUCTION

On or about November 19, 2010, Mr. Lopez was arrested. Prior to his arrest, Mr. Lopez used marijuana. On November 23, after a detention hearing, Mr. Lopez was released on a surety bond. With pretrial services and the Court having knowledge of Mr. Lopez's prior drug use, one of the conditions of his release was to refrain from using marijuana. In a little over one month from his release, Mr. Lopez was tested multiple times for marijuana use. Four breath samples and one urine sample tested negative. According to Alere Laboratories, however, three urine samples tested positive.

On January 6, 2011, Mr. Lopez began substance abuse counseling at ReDiscover. He successfully completed his first session. On January 7, he submitted another urine and breath sample that tested negative for marijuana use. The Government then filed a motion to revoke Mr. Lopez's bond. The motion should be denied.

SUGGESTIONS IN OPPOSITION

Mr. Lopez admitted to pre-trial services that he used marijuana for personal use before his arrest. It should be no surprise, therefore, that traces of marijuana from his prior use could be found in his system after his release. See *United States v. Dawson*, 52 F.3d 631, 633 n. 3 (7th Cir. 1995) (“given the frequency of Dawson's testing, the positive results for marijuana may not be completely accurate. In chronic marijuana users, cannabinoids may be detected for three weeks or longer”); Ross A. Epstein, *Urinalysis Testing in Correctional Facilities*, 67 B.U.L.REV. 475, 483 (1987) (THC “may be present in urine up to five weeks after marijuana use”). Cf. *Anderson v. Eichenlaub*, 2007 WL 2300720 (E.D. Mich. Aug. 7, 2007) (the Federal Bureau of Prisons “estimates that a person’s urine can test positive for THC up to 30 days after the last use”).

At most, the evidence suggests that any marijuana traces found in Mr. Lopez’s system are mere remnants of his pre-arrest drug use. Cf. *Bieberle v. United States*, 255 F. Supp. 2d 1190, 1199 (D. Kan. 2003) (“inactive THC metabolites can be present and are detectable in urine for days or weeks or even months under some conditions”); *Dawson*, 52 F.3d at 633 n. 3. Since his release, five breath samples and two urine samples (the most recent conducted on January 7 – confirmed by pretrial services) tested negative for marijuana use. These results actually show Mr. Lopez’s progress in refraining from illicit drug use.

Additionally, Mr. Lopez has abided by all the conditions of his release. As noted by pretrial services, he resides locally with his wife and child, remains employed (as he has for at least six years), consistently reports to pretrial services, and has had no adverse contact with law enforcement. He is no more a danger to the community or a flight risk now than he was when released. Moreover, on January 6, 2011, Mr. Lopez successfully completed his first session on substance abuse treatment. The very next day, he again tested negative for marijuana use. The

evidence, taken together, shows that Mr. Lopez has abided by the conditions of his release. The Government's motion should be denied.

Respectfully submitted,

ARMSTRONG TEASDALE LLP

BY: /s/ Dione C. Greene

Dione C. Greene MO #58781
2345 Grand Boulevard, Suite 2000
Kansas City, Missouri 64108-2617
816.221.3420
816.221.0786 (facsimile)
dgreene@armstrongteasdale.com

ATTORNEY FOR DEFENDANT JOSEPH
MICHAEL LOPEZ

CERTIFICATE OF SERVICE

This is to certify that on Wednesday, January 12, 2011, a true and accurate copy of the above and foregoing was e-filed with the Court using the CM/ECF system which sent notification to all parties entitled to service.

/s/ Dione C. Greene