

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

United States of America
(Fictitious Plaintiff)

v.

Frank M. Alvarez
(Real Party In Interest)

Case# 10-00320-16-CR-W-DGK

Motion To Dismiss For Violation Of Due Process Of Law

Comes now, Frank M. Alvarez, the flesh and blood, living soul of majority age and sound mind, competent to state the matters set forth herein do affirm that the foregoing is true, correct and complete not misleading with 1st hand knowledge of the facts here with Title 28 U.S.C. 1746 (1) "without the United States" under penalty of perjury, sworn to within the United States of America.

Defendant in error is demanding dismissal with prejudice of case for denying my constitutional rights which have deprived me of due process of law and violatd the 14th Amendment of equal protection under law.

"Due Process of Law is primary and indispensable of individual freedom, application of Gault, 387 US 1(1967), the Due Process Clause was intended to guarantee procedural standards adequate and appropriate to protect, at all times, people charged with or suspected of crimes by those holding positions of power and authority, Chambers v. States, 309 US 227 (1940). Denial of Due Process Of Law is to be tested by an appraisal of the totality of the facts in a given case, Betts v. Brady, 316 US 455(1942)".

We see at 28 U.S.C. 2072 (b) that Federal Rules of Procedure may not deprive anyone of substantive rights. In a manner of speaking, rights secured by the Fourth, Fifth and Sixth Amendments are carved in stone and they are cumulative, they are not independent or elective unless someone knowingly chooses to forfeit one of the specified rights. If one of the constitutionally secured rights is bypassed, administrative offices, including the Department of Justice and the U.S. Attorney, and Courts of the United States, lack or lose subject matter jurisdiction. This is the essence of the Fifth Amendment guarantee that no person shall be deprived of life, liberty, or property without "Due Process of Law". Here we see two distinct elements: Not only does there have to be law which compels or prohibits any given activity, but procedure or process must conform to that prescribed by the "Constitution and laws of the United States". The Fourth, Fifth and Sixth Amendments secure mandatory minimum requirements of due process. The Fourth Amendment requirement for probable cause, "supported by oath or affirmation", is the jumping-off point: No warrants shall issue but upon probable cause,

supported by oath or affirmation. Here are two secured rights: There must be an oath or affirmation, a complaint, that specifies key elements of a crime, and a committing magistrate must issue a warrant based on the complaint. The complaint is made in a probable cause hearing, unless or until these threshold requirements are met, there can be no Federal prosecution.

That the Supreme Court states that a complaint is the initial document for charging a person with a misdemeanor or felony, State v. Noorlun, 2005 UD 189, 705 N.W. 2d 819(N.D. 2005) Cert. denied, 126 S.Ct. 2869, 165 L. Ed. 2d 902 (US 2006).

That a complaint provides "the foundation" for the neutral judgement by a Judicial Officer that resorts to further criminal process is justified, State v. Faltynowicz 660 P. 2d 268 (Wyo 1983).

For the record defendant in error invokes the doctrine of stare decisis for all filed motions.

This Court shall also take Mandatory Judicial Notice of the Adjudged decision of the Supreme Court of the United States of the United States of America; United States v. Bishop 412 U.S. 346, 360 (1973), states; That if I have relied on prior decisions of the Supreme Court, I have a "perfect defense" for will fullness!

Let the record show that I have in my possession copies of actual complaint and affidavit of probable cause from the Western District Of Missouri on a drug and weapon case which mirrors my said indictment. "See Exhibit A, B, C, D".

These are the facts that are given by the law and are of superior rulings, therefore there should be no question of law of what decision should be made. This motion must be granted based upon the rulings and facts in law of the Superior Courts. It is so demanding that this case be dismissed with prejudice immediately for the open denial of my secured constitutional rights of due process of law and the equal protection law found in the 14th Amendment.

Certificate of Service

I Frank M. Alvarez, the living, breathing, flesh and blood natural born free state citizen Soi Juris at Law comes with this motion to dismiss for violation of Due Process of Law, being placed before this Clerk of Court of the United States District Court For The Western District of Missouri Western Division on this day of 16th and month of May in the year of 2011.

Judge Greg Kays
400 E. 9th St.
Kansas City, MO 64106

Chief Judge
400 E. 9th St.
Kansas City, MO 64106

Bruce Rhoades,
U.S. Attorney's Office
400 E. 9th St.
Ste. 5510
Kansas City, MO 64106

Respectfully, without explicit reservations of all my rights without prejudice.


Frank M. Alvarez

