

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 10-00320-16-CR-W-DGK
)	
FRANK MICHAEL ALVAREZ,)	
)	
Defendant.)	

**GOVERNMENT’S RESPONSE TO
DEFENDANT FRANK MICHAEL ALVAREZ’S
MOTION FOR A BILL OF PARTICULARS**

Comes now the United States of America, by Beth Phillips, United States Attorney, and the undersigned Assistant United States Attorney, both for the Western District of Missouri, respectfully submits this response to defendant’s Motion for a Bill of Particulars, filed May 11, 2011. Defendant contends that he is entitled to a Bill of Particulars in this case with respect to Counts One and Two of the indictment in order to understand the “exact scope of and reason for the objection .”

The Government notes that the two conspiracy counts in the indictment incorporate a description of the manner and means of the conspiracy as well as acts undertaken by various conspirators. The factual basis for these counts was described in some detail in the affidavit for the Title III interceptions, the factual summary provided to each defendant and discussed on the record at the detention hearing, and there has been substantial discovery provided in this case including recordings of hundreds of intercepted telephone calls and transcripts of a large number of those calls.

Even without the discovery already provided, the indictment is clearly adequate on its face, in that it puts the defendant on notice of the parameters of the conspiracy charges, and as such operates as a bar to double jeopardy for subsequent prosecutions. No more is required, for when an indictment facially states an offense, the notice of proof concerns raised by defendant are not properly included in an inquiry into the indictment's sufficiency. *United States v. Miller*, 471 U.S. 130, 134-135 (1985); *accord*, *United States v. Peterson*, 867 F.2d 1110, 1114 (8th Cir. 1989). An attempt by the defendant to reach any detail of the evidence supporting the indictment at this stage is also improper, in that an indictment which is valid on its face is not subject to challenge on a basis of either the reliability or the competence of evidence presented to the Grand Jury. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 108 S. Ct. 2369 (1988); *citing*, *Costello v. United States*, 350 U.S. 359, 363 (1956); *accord*, *United States v. Calandra*, 414 U.S. 338, 345 (1974).

The indictment and the discovery to date are more than sufficient to make clear to the defendant the nature of the charges against him so that he may understand the nature of the charges, prepare his defense, and be able to protect himself against double jeopardy. *United States v. Garrett*, 797 F. 2d 656, 665 (8th Cir. 1986). The Government need not do a defendant's legwork or disclose to the defense the details of how it will prove its case at trial. *United States v. Kendall*, 665 F.2d 126, 135 (7th Cir. 1981), *cert. denied*, 455 U.S. 1021 (1982); *United States v. Pollack*, 534 F.2d 964, 970 (D.C. Cir.), *cert. denied*, 429 U.S. 924 (1976).

The defendant has failed to provide a valid basis for his request, and the United States has in good faith supplied more than is required as an alternative to a Bill of Particulars. The defense motion should be denied.

Respectfully submitted,

Beth Phillips
United States Attorney

By */s/ Bruce Rhoades*

Bruce Rhoades
Assistant United States Attorney

Charles Evans Whittaker Courthouse
400 E. 9th Street, Suite 5510
Kansas City, Missouri 64106
Telephone: 816- 426-3122

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on May 23, 2011, to the Electronic Filing System (CM/ECF) of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

Frank Michael Alvarez
100 Highway Terrace
Leavenworth, KS 66048

/s/ Bruce Rhoades

Bruce Rhoades.
Assistant United States Attorney