

**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 TO DISMISS FOR VIOLATION OF DUE PROCESS OF LAW**

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 to Dismiss for Violation of Due Process of Law, filed May 20, 2011. In his motion, the defendant claims that his due process and equal protection rights have been violated. There is no due process or equal protection violation, and it is unclear how there could be one. The Government strongly opposes defendant’s Motion to Dismiss based on the defendant’s failure to make a claim and other legal arguments.

I. THE INDICTMENT

The defendant lays out the procedure for acquiring a complaint and seems to argue that the complaint in his case was insufficient, violating his due process rights. However, the evidence was presented to a grand jury who found probable cause, and directed an indictment to be issued. The indictment in the defendant’s case was sufficient and does not violate his due process rights. Fed.R.Crim.P. 7(c) requires an indictment to be “a plain, concise and definite written statement of the essential facts constituting the offense charged” and emphasizes that an

indictment “need not contain . . . any other matter not necessary to such statement.” The Eighth Circuit has consistently held that an “indictment which tracks the language of the appropriate statute, advises the defendant of the elements of the offense, apprises him of the charges, and allows him to plead a conviction or an acquittal as an impediment to subsequent prosecutions is sufficient.” *United States v. Young*, 618 F.2d 1281, 1286 (8th Cir.), *cert. denied*, 449 U.S. 844 (1980), *quoting United States v. Fleming*, 526 F.2d 191, 192 (8th Cir.), *cert. dismissed*, 423 U.S. 1082 (1976); *see also United States v. Powell*, 701 F.2d 70 (8th Cir. 1983).

In charging a conspiracy, all that is required of an indictment is to provide “certainty, to a common intent, sufficient to identify the offense which the defendants conspired.” *Wong Tai v. United States*, 273 U.S. 77, 81 (1927). The Supreme Court has held “it is not necessary to allege with technical precision all the elements essential to the commission of the offense which is the object of the conspiracy.” *Wong Tai*, 273 U.S. at 81. The Eighth Circuit has followed the lead of the Supreme Court and will uphold indictments charging conspiracies as long as they set out a limiting time frame and specify the offense involved. *United States v. Peterson*, 867 F.2d 1110, 1114 (8th Cir. 1992) (holding sufficient an indictment for a conspiracy to sell a controlled substance when the indictment listed the time frame for the activity, members of the alleged conspiracy, and the “type of drugs involved”), overruled on other grounds, *United States v. Richardson*, 439 F.3d 421 (8th Cir. 2006).

A comparison between the text of the conspiracy statutes and the text of the conspiracy counts in the indictment readily reveals that the counts carefully track the language of the statute and contain all the essential elements of the crimes charged. Based on the language used in each conspiracy count, the defendant is fully apprised of the charges against him and would have no

difficulty in raising a double jeopardy defense in the event of a subsequent prosecution following a conviction on the charges herein.

The sufficiency of an indictment is not a question of whether it could have been more definite and certain. *United States v. Glup*, 482 F.2d 1288, 1289-90 (8th Cir. 1973); *Anderson v. United States*, 262 F.2d 764, 770 (8th Cir. 1959). Instead, an indictment “will ordinarily be held sufficient, unless [it is] so defective that by no reasonable construction can it be said to charge the offense for which the defendant [was] convicted.” *Young*, 618 F.2d at 1286 (*quoting Muench v. United States*, 96 F.2d 332, 335 (8th Cir. 1938)); *United States v. Nabors*, 45 F.3d 238, 240 (8th Cir. 1995) (*quoting United States v. Peterson*, 867 F.2d 1110, 1114 (8th Cir. 1989)). Moreover, particular words or phrases are not required; as long as the indictment does not omit an essential element and substantially states the essential elements, it is sufficient. *United States v. White*, 241 F.3d 1015, 1021 (8th Cir. 2001). Here, the conspiracy counts in the indictment meet or exceed the minimal requirements for a sufficient indictment. The defendant has received all of his due process rights in regards to the indictment.

II. THE “SOVEREIGN CITIZEN” MOVEMENT AND “REDEMPTION THEORY”

Defendant’s Motion for Dismissal is cryptic and often unintelligible. His motion is consistent with arguments raised by misguided criminals who are often referred to as “sovereign citizens” or “redemption theory” defendants. Criminals, such as the defendant, who raise the so-called sovereign citizen defense, often insist on representing themselves during criminal proceedings, usually to their own detriment. *See United States v. Johnson*, 610 F.3d 1138, 1140 (9th Cir. 2010) (affirming defendants’ convictions stating that “[t]hey were adamant in their desire to represent themselves and assert an absurd legal theory wrapped in Uniform Commercial

Code gibberish The record clearly shows that the defendants are fools, but that is not the same as being incompetent They had the right to represent themselves and go down in flames if they wished, a right the district court was required to respect.”). The defendant’s motion raises several improper legal arguments consistent with the “sovereign citizen” movement and “redemption theory.” Federal courts throughout the nation have rejected such arguments as being frivolous and without merit.

III. CONCLUSION

Defendant's Motion to Dismiss is without a sound basis in either fact or law and 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 June 2, 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