

**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 CASE  
FOR ABSENT PROOF OF FEDERAL JURISDICTION**

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 the defendant’s Motion to Dismiss, Document 239, filed May 31, 2011. Defendant seeks an order of dismissal alleging that there is no proof of federal jurisdiction over his case. These contentions are without merit under the applicable law and the facts of this case. The government strongly opposes the defendant’s request for dismissal.

Although the defendant cites various entities and references in his motion,<sup>1</sup> his motion to dismiss the case for absent proof of federal jurisdiction presents only one issue to this Court for consideration. Specifically, the defendant asserts that in federal criminal cases, “the District Courts of the United States shall have original jurisdiction, exclusive of the United States.” *See*

---

<sup>1</sup>Defendant’s references include the US Constitution, Art. III Sec 2, 28 U.S.C. 1746(1) [sic], 28 USC 3002(15)(A) [sic], Title 28 § 132 [sic], 28 U.S.C.A. § 1331 [sic], Federal Rules of Civil Procedure Rule 17, and U.C.C. 9-307(b), Public Law 475 [sic], Public Law 94-381, “Admiralty Civil Law Rules,” and civil case law. None of these cited authorities have any relevance as to whether this Court has jurisdiction to preside over the criminal case pending against the defendant.

Motion to Dismiss, at 3 (Doc. 239). He further argues “[t]he District Court of the United States is a constitutional court vested with Article III Judicial Power and a/this United States District Court is defined as a Territorial Court created by statute under Article I (legislative).” *Id.* at 5 (emphasis in original). Inexplicably, the defendant concludes that this Court does not have subject matter jurisdiction in this case. The defendant is incorrect.

It is axiomatic that this Court is an Article III federal district court. *See* U.S. CONST. Art. III, §§ 1, 2; 28 U.S.C. §§ 105, 132. As a district court of the United States, this Court “shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.” 18 U.S.C. § 3231. A federal grand jury determined that there was probable cause to believe the defendant committed the offenses; each of the alleged offenses are crimes established by acts of Congress – 21 U.S.C. §§ 841, 846, and 1956. Accordingly, the grand jury issued an indictment against the defendants. It is not disputed that the alleged misconduct occurred within the Western District of Missouri. As an Article III district court, this Court has subject matter jurisdiction to hear the pending case because it involves allegations of offenses against the laws of the United States which occurred within the district. *See United States v. Trotter*, 478 F.3d 918, 920 n.2 (8th Cir. 2007) (“Because Trotter was charged with an offense against the laws of the United States, the court clearly had jurisdiction and his motion to dismiss was properly denied.”).

The defendant relies almost exclusively on authorities that have no relevance to the issue of whether this Court has subject matter jurisdiction. Defendant’s misplaced reliance on the Federal Rules of Civil Procedure, case law involving civil litigants, and provisions of the

Uniform Commercial Code (“U.C.C.”) are consistent with arguments raised by misguided criminals who are often referred to as “sovereign citizens” or “redemption theory” defendants.

In another similar case, in reference to a defendant’s motion to dismiss for lack of subject matter jurisdiction, one district court judge stated: “These arguments are patently without merit. Perhaps they would even be humorous—were the stakes not so high. To begin with, the U.C.C. has no bearing on criminal subject matter jurisdiction.” *United States v. Mitchell*, 405 F. Supp. 602, 603-04 (D. Md. 2005) (denying motions to dismiss for lack of subject matter jurisdiction because the U.C.C. and federal civil procedure rules could not serve as sources for any argument against jurisdiction of a federal district court over a case involving federal offenses prosecuted in the district) *see also Marshall v. Florida*, No. 10-20227-JORDAN, 2010 WL 1248846 (S.D. Fla. Feb. 1, 2010) (explaining that “‘Redemption’ is an anti-government scheme that utilizes commercial law to harass and terrorize its targets . . . This theory advocates that an individual can ‘redeem’ himself through the filing of commercial documents.”).

This Court clearly has jurisdiction over this case. The defendant’s Motion to Dismiss Case for Absent Proof of Federal Jurisdiction 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 3, 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