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

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

ORDER

Throughout the pendency of this case, defendant has filed numerous mysterious documents which I will now address.

Document number 228, "Mandatory Administrative Judicial Notice." This document does not request any relief. It purports to be a "Responsibility Disclaimer" and discusses titles of nobility, the Foreign Sovereign Immunity Act, sanctions, surrendering the United States Constitution, breach of contract, perjury of oath, constructive treason, and false swearing. I can find no way to interpret this as a motion for relief. To the extent defendant intended this document to be a motion, it is denied.

Document number 229, "Administrative Notice for Lawful Request." Defendant requests a written statement from "all agents and officers of the United States District Court" as to what articles of the Constitution were used to create the court. Defendant states that he needs a copy of the jury service and selection plan to "further prove for me that this Court was created pursuant to Article I of the United States Constitution and therefore, the Court is limited to territorial jurisdiction consisting of the lands and improvements over which the Government of the United States has exclusive jurisdiction. The purpose of this request is tdo [sic] alert you to the fact that the United States District Court, District of Western Missouri has no Article III Judicial Power!" Defendant's attempt to distinguish Article I from Article III

when it comes to the United States District Court in the Western District of Missouri is incorrect and irrelevant. To the extent this "Administrative Notice" was intended to be a motion, it is denied.

Document number 240, "Affidavit in Fact and Truth." This is a lengthy hand-written document which randomly alleges facts, most of which merely make me scratch my head in bewilderment. There is no remedy sought; there appears to be no rhyme or reason for the compilation of statements in this document -- for example, "That, we are a Defacto nation functioning under Martial Law with Defacto civil system enforced through police power." Defendant does not explain what this has to do with his case, or what he wants me or the trial judge to do about such an assertion. Another example: "That, in said cause (supra), no indemnity bond to indemnify said actions by Fictitious Plaintiff as to 'Any' Injury that may befall the undersigned has been posted." In support of that statement, defendant cites a state law case. Defendant also states that "the court has No Jurisdiction to determine its own jurisdiction". I don't know what to say about that. Defendant repeats the now all-too-familiar argument that a complaint is the initial document for charging a person with a misdemeanor or felony (citing Wyoming state law) and then pointing out that no criminal complaint was filed in his case. The remainder of the document is comparable. Because defendant has asked for no relief in this document, to the extent he intended it to be a motion, it is denied.

Document number 262, "Notice of fault and opportunity to care and contest acceptance." Defendant claims that the government "failed to respond lawfully and follow the order set forth by this said court that a response was due by (6-3-2011)", referring to his motion to sever. The motion to sever was filed on May 16, 2011, after having been docketed by an employee of the Clerk's Office. The docket entry reads as follows: "MOTION for order of severence [sic] by Frank Michael Alvarez. Suggestions in opposition/response due by

6/3/2011 unless otherwise directed by the court. (Wheeler, LaTandra) (Entered: 05/17/2011)." First I note that this docket entry includes a standard phrase generated by ECF which in no way supercedes court orders, hence the phrase "unless otherwise directed by the court." During the arraignment, counsel and the parties were reminded that ECF calculations do not apply in criminal cases. The minute entry includes the following: "The Government is reminded that ECF calculates deadlines under civil rules and those deadlines do not apply to this case. Failure to file a response within 7 days of the filing of the motion, regardless of when ECF says a response is due, may result in the motion being granted as unopposed." Finally, I note that an order entered on February 24, 2011, fixed the deadline for filing pretrial motions as May 2, 2011. Defendant signed the motion to sever on May 11, 2011, without requesting leave to file it out of time. In addition because defendant's motions have to be mailed as opposed to entered through ECF, he failed to allow sufficient mail time for the motion to reach the court and be filed within any applicable deadline. The order granting defendants additional time to file pretrial motions provided for a 21-day response time. Rather than requesting that defendant's motion to sever be stricken as untimely, or even using the previously granted 21-day response time, the government used the standard seven-day time period as ordered during the arraignment.

Defendant's "notice" directs that the government cure the "fault" within three days or the motion for severance must be granted. Unfortunately for defendant, he may only make requests -- he does not get to issue orders. Defendant's remedy is to appeal the denial of his motion to sever. He may not win on his motion by issuing ultimatums to the government.

Document number 287, "Administrative Judicial Notice." This is yet another document complaining that "there has 'Never' been filed or shown to defendant any 'complaint' or 'Affidavit of Probable Cause' in said case." Defendant appears to argue that he has been denied

due process because there was no criminal complaint filed in his case. I have dealt with this issue too many times already. Defendant is being reminded for the last time that in federal court -- which is where his case is -- no criminal complaint is required. Defendant once again attaches a redacted copy of a criminal complaint against Adam McGrone in case number 10-0156JTM-01 (10-00290-01-CR-W-ODS). He also attaches a copy of Brown v. Duggan, 329 F. Supp. 207 (W.D. Pa. 1971) (and conveniently omits the second part of the opinion which includes the holding). That case dealt with a motion to proceed in forma pauperis in a civil case brought by an inmate whose prayer for relief included the arrest of his former attorney. The District Court held as follows:

> Our requirement that the complainant meet the requirements of Criminal Rules 3 and 4 is not unreasonable. The Fourth Amendment rights of attorneys and public prosecutors are entitled to the same degree of protection as the rights of other persons. To enable convicted persons to cause arrest warrants to issue against prosecutors and defense counsel on loosely drafted complaints creates obvious dangers. If investigation is required, a complaint should be addressed to the United States Attorney who is charged with the duty of investigating bona fide criminal activity.
>
> We do not believe our action in this case is similar to a sua sponte dismissal of a Civil Rights Complaint. It is therefore not necessary for us to make a determination that the complaint is frivolous or malicious, 28 U.S.C.A. § 1915(d). The petition to proceed in forma pauperis is denied and the complaint is ordered dismissed.

This case does not help defendant's cause. It merely emphasizes how little he understands what he reads when it comes to the law. To the extent document number 287 is another motion for some form of relief on the ground that no complaint was filed in this case, it is denied.

Document number 329, "Mandatory Judicial Notice of Code of Federal Regulations." This document discusses the Administrative Procedure Act. Defendant's argument, that there are no enabling regulations for 21 U.S.C. §§ 841 and 84, has been made and rejected repeatedly. See United States v. Maynard, 2008 WL 2059635 (C.A.3 (Virgin Islands)); Woodfolk v. Dodrill, 2007 WL 1739949 (C.A.3 (Pa.)); Perales v. Drug Enforcement

Administration, 2001 WL 1263669 (C.A.7 (Ill.)); Harvard v Pontesso, 1997 WL 453135 (C.A.6 (Mich.)); Lawson v. United States, 1996 WL 132184 (C.A.6 (Ohio)). To the extent defendant intended this document to be a motion, it is denied.

It is

ORDERED that any motion intended to have been made in document numbers 228, 229, 240, 262, 287, and 329 is denied.

Defendant is again strongly encouraged to reconsider his decision to represent himself. As defendant was informed during the hearing on his decision to proceed pro se, lawyers have the benefit of a four-year college degree and a law license which requires three years of full-time law school and passage of a bar exam. Defendant not only lacks this level of education, he has shown no ability to understand legal arguments that have been advanced on behalf of others (and how those arguments usually do not apply to defendant's case) or any other legal materials he has read. This is not meant to be critical of defendant -- it is simply a strong reminder that trying to take a crash course in the law, especially when that crash course is being taught either by other inmates who have no more knowledge than defendant or by no one at all, is not a particularly wise thing to do when one is under federal indictment for two felonies. In the event defendant changes his mind about self-representation, he should contact his stand-by counsel who will notify me so that a record can be made.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
September 19, 2011