

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

UNITED STATES OF AMERICA,

Plaintiff

VS.

Frank M. Alvarez,

Defendant

}
}
} case no. 10-00320-16-CR-W-DGK
}
}

MOTION OF APPEAL

Comes now defendant in error, FrankM. Alvarez, pro se, in pursuance With Federal Rules of Civil Procedure, Rule 72, hereby moving this court to grant this motion of appeal.

As appellate argument, the defendant offers:

ASSERTABLE ARGUMENT

1) IT is Alvarez's assertion that this district court erred in denying his motion to inspect jury records and to quash jury panel. As statutorily provisioned by § 1867(a) of title 28 U.S.C of chapter 121, and the Sixth Amendment of the U.S. Constitution, Alvarez has the right(s) to challenge the grand jury array and individual jurors prior to the seating of the grand jury: In criminal cases, before voir dire begins, or within seven days after the defendant discovered... the grounds therefor, whichever is earlier... the defendant may move to dismiss the indictment... on substantial failure to comply with the selection provisions of this title in selecting the grand... jury. This right was deprived the defendant before the jury was impaneled. He now seeks to exercise this right. His allegation(s) is that members of identifiable class may have been excluded from jury service and those members being MEXICAN AMERICANS.

On the date of October 5th, 2011 defendant Alvarez received an Order from the honorable Chief Magistrate Judge Robert E. Larsen denying and striking from record a previous motion filed by the defendant to inspect and quash jury impanelment, filed September of 2011.

This Order is in direct violation of Alvarez' right(s) to due process and equal protection of the laws pursuant to Title 42 U.S.C. § 1983, as Federal Rules of Criminal Procedures, Rule 6(b), and Title 28 U.S.C. §§ 1867(a) et seq., which affords for a defendant in a criminal case the opportunity to challenge by motion the methods by which a grand and/or petit jury was selected. See *Text v. U.S.*, 420 U.S. 28, 95 S.Ct. 749 stating that ... an unqualified right to inspection of jury lists in connection with preparation and presentation of a motion challenging jury selections procedures was required not only by the plain text of the Jury Selection and Service Act but also by the statute's overall purpose of insuring "grand and petit juries selected at random from a fair cross section of the community." 28 U.S.C. §§ 1861 et seq., 1867(f).

The Chief Magistrate's decision to deprive defendant Alvarez of this statutory and constitutional right based on his presumption that defendant's time for filing pretrial motions has expired, arbitrarily negates the statutes of the Jury Selection and Service Act, and the Fifth Amendment's requirements of due process.

In the plain language of § 1867(f), Mr. Alvarez has an unqualified right to (2) two things: (1) an unqualified right to the inspection of grand jury lists and, (2) an unqualified right to challenge by motion the methods by which the jury was impaneled.

This Circuit Court in U.S. v. Alden, 776 F. 2d 771 (C.A.8(Mo.) 1985) followed the precedent set by the Text Court finding that "To avail himself of right of access to otherwise unpublic records, criminal defendant need only allege that he is preparing motion challenging jury selection procedures; defendant's motion may not be denied because it is unsupported by sworn statement of facts which, if true, would constitute substantial failure to comply with provisions of Jury Selection Act, nor may motion to inspect be denied because defendant failed to allege facts which show probability of merit proposed jury challenge." 28 U.S.C. §§ 1861 et seq., 1867(f).

This Court is not free to establish additional requirements that defendants must meet in order to gain access to jury selection records. The Supreme Court has unequivocally stated that the right to inspect these records is "essentially unqualified" and is conditioned only in the manner set forth in the statute. Test v. United States, 420 U.S. at 30, 95 S.Ct. at 750. Title 28 U.S.C. § 2072(b) specifically prohibits this District Court from abridging or enlarging rights provided to the defendant.

The ruling made by Chief Magistrate Larsen is designed to do just that. As this is so, and all supporting statute and ruling case law point toward support of defendant Alvarez' contention that the Order issued denying him access to grand jury lists is illegal in violation of the Fifth and Fourteenth Amendments, this Court must issue Order overruling Magistrate Larsen's decision denying defendant's motion to inspect and quash the grand jury impanelment.

In further support of his appellate claims, Alvarez list that:

3.

the Jury Selection and Service Act provides him with an undeniable access to the grand jury records he is seeking, and that Magistrate Larsen has no legal authority to deprive defendant of his constitutional and statutory rights to challenge the methods by which the jury was selected. If given access to these lists, he will prove that there has been an illegal and systematic exclusion of Mexican-Americans, and African-Americans from the grand jury service.

Therefore, pursuant to 28 U.S.C. §§ 636(b)(1)(A), and Civil Procedures Rule 70, this Court must overrule the Recommendation and Order of Magistrate Larsen, and grant defendant Alvarez' appeal in this matter.

CERTIFICATE OF SERVICE

It is hereby certified that one copy of this motion has been filed and mailed to United States Assistant Attorney Bruce Rhoades, pursuant to F.R.Crim.P., Rules 49(a),(b), and (d), and F.R.Civ.P., Rules 5(b), at 400 East Ninth Street, Kansas City, Missouri, 64106 this 12th, date of October, 2011.

Respectfully submitted,

Frank M. Alvarez, pro se
100 Highway Terrace, (CCA)
Leavenworth, Kansas 66048

Frank Alvarez

USA FIRST-CLASS FOREVER



MISSOURI CITY, MISSOURI

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c/o Clerk of Court

~~Western~~

United States Court for the Western District of Missouri
Western Division

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