

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

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.09-00121-01-CR-W-DGK
	)	
<b>GILBERTO LARA-RUIZ,</b>	)	
	)	
Defendant.	)	

**GOVERNMENT’S RESPONSE TO DEFENDANT’S  
MOTION TO DISMISS INDICTMENT**

The United States of America (“United States”) submits the following response to defendant Gilberto Lara-Ruiz’s Motion to Dismiss Indictment (document 154) dated June 14, 2010.

**FACTUAL BACKGROUND**

1. The defendant in this case was previously charged in a four count superceding indictment in Case No. 07-04002-01-CR-C-SOW. Lara-Ruiz then entered a plea agreement with the government, pleading guilty to counts 2 and 4 of the superceding indictment. In compliance with the agreement, the United States agreed to dismiss counts 1 and 3 of that indictment. The Court accepted the guilty plea on May 2, 2007.

2. In the plea agreement, the government agreed not to bring any additional charges against the defendant “(b)ased upon evidence in its possession . . . for which it (had) venue and which arose out of the defendant’s conduct.” (Plea Agreement at ¶ 7.) The conduct referred to is that described in paragraph 3, which lays out the factual basis for the plea and describes the defendant’s interactions with an unnamed criminal witness located in Harrisonville, MO. The

description states that the conduct forming the basis of the agreement only includes one incident in which Lara-Ruiz knowingly and intentionally distributed 500 grams or more of a substance containing methamphetamine. (Plea Agreement at ¶ 2.) The agreement also states that it “does not foreclose any prosecution for . . . an act or attempted act of physical or sexual violence.” (Plea Agreement at ¶ 7.) The defendant reached the agreement with the United States Attorney’s Office for the Western District of Missouri Central Division (“Central Division”).

3. Prior to the plea agreement, the United States Attorney’s Office for the Western District of Missouri Western Division (“Western Division”) began conducting a separate and independent investigation into a defendant known only as “Hill.” Several witnesses stated that “Hill” distributed methamphetamine in and around Kansas City. However, the Western Division was unable to obtain the legal name of “Hill” because none of the witnesses knew it. Only later was it determined by the Western Division that “Hill” is the defendant in this case, Gilberto Lara-Ruiz. This determination was made after the Central Division entered into the plea agreement with the defendant.

4. The defendant was indicted on April 9, 2009 in this case. The evidence supporting this Indictment is based on the efforts of the Western Division and the information it obtained in its investigation. It was not until the defendant’s legal name was uncovered that the Western Division was aware of the plea agreement. Additionally, the Central Division did not know of the investigation being conducted by the Western Division prior to the plea agreement.

### **DISCUSSION**

5. Because the defendant failed to establish a breach of the plea agreement, the Motion to Dismiss Indictment should be denied. In *United States v. Leach*, 562 F.3d 930, 935

(8th Cir. 2009), the court held that the party asserting breach of a plea agreement has the burden of establishing the breach. When the language of a plea agreement is unambiguous the court should enforce the plain meaning of the agreement. *United States v. Kelly*, 18 F.3d 612, 616 (8th Cir. 1994). The language of the plea agreement in this matter is unambiguous and makes it clear that the government only agreed to forego charges related to the defendant's conduct described in the plea agreement. (Plea Agreement at ¶ 2.) This only includes the defendant's actions in Harrisonville, MO and his interactions with the criminal witness in that investigation. Specifically, the government agreed to forego prosecution of the additional charges it had against the defendant in the "buy-bust" investigation in Harrisonville. The language of the plea agreement does not preclude the Western Division from prosecuting its separate and independent investigation of "Hill" who was not known to be Lara-Ruiz at the time of the agreement.

6. The defendant's Motion to Dismiss Indictment should be denied even if the Court concludes that the language of the plea agreement is ambiguous. If the language of a plea agreement is ambiguous the court must determine the parties' intent based on the language used. *Kelly*, 18 F.3d at 616. It was not the intent of the Central Division to render a separate investigation of an unnamed defendant by the Western Division useless. This is made clear by the phrase "(b)ased on the evidence in its possession at this time." (Plea Agreement at ¶ 7.) The Central Division did not have evidence establishing that the defendant was the same person being investigated by the Western Division at the time of the agreement. Because the defendant's true identity was unknown, neither the Central Division nor the Western Division had any knowledge of the entire range of his criminal activities.

7. Precluding the government from bringing charges against Lara-Ruiz for actions

not described in the plea agreement would be unjust. Allowing a defendant to plead to a small sentence in one division without the United States having knowledge of his activities in another would allow him to quickly plead to avoid prosecution for undisclosed crimes. If the government is then precluded from bringing additional charges, the defendant would be able to negotiate a lesser plea without the government being aware of the defendant's entire range of criminal activities.

8. Alternatively, the Central Division did not have the venue described in paragraph 7 of the plea agreement to pursue the criminal activities of the defendant which form the basis of the present Indictment. The Court's filing system indicates that the plea agreement was reached in the Central Division whereas the present case is proceeding in the Western Division based on acts which occurred in the Western Division. The Central Division's jurisdiction within the United States Attorney's Office does not extend to the counties where the acts occurred which form the basis of the present Indictment.

9. Even if the Court determines that some of the counts of the Indictment are precluded by the plea agreement<sup>1</sup>, the language of the agreement requires the government be allowed to proceed on counts 14 and 15. The agreement explicitly states that it does not foreclose prosecution for any "act or attempted act of physical or sexual violence." (Plea Agreement at ¶ 7.) Under the United States Sentencing Guidelines § 4B1.2 and Application Note 1, counts 14 and 15 are considered "crimes of violence." The discharge of a firearm during and in relation to a drug trafficking crime is clearly an act of violence. Furthermore, count 14 is

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<sup>1</sup>The Government, in making this argument, in no way concedes this point and in fact vociferously objects to the dismissal of any counts in the pending indictment.

specifically identified as violent because it involves the use of a “sawed-off” shotgun.

**CONCLUSION**

For the foregoing reasons, the United States respectfully requests the Court deny the defendant’s Motion to Dismiss Indictment (document 154) dated June 14, 2010. Additionally, the government requests that the motion be dismissed without a hearing on the issue as the defendant has failed to establish a breach of the plea agreement.

Respectfully submitted,

Beth Phillips  
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By */s/ Bruce Rhoades*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was delivered on June 25, 2010, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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*/s/ Bruce Rhoades*

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