

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
KANSAS CITY, MISSOURI**

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

**DEFENDANT’S SUGGESTIONS IN SUPPORT OF
DEFENDANT’S MOTION TO DISMISS
HEARING REQUESTED**

COMES NOW the defendant, Gilberto Lara-Ruiz, by and through his attorney of record, Jacquelyn E. Rokusek, and hereby responds to the allegations set forth in the government’s response to the defendant’s Motion to Dismiss the Indictment (Document 154). The defendant responds as follows:

1. The government alleges in Paragraph 2 of the Response Motion¹ that the Government’s Agreement² in the Plea Agreement in Case 07-04002-01³ prevents the government from bringing 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.” However, the Plea Agreement was more explicit in Paragraph 7. The Plea Agreement actually states, “Based upon evidence in its possession at this time, the United States Attorney’s Office for the Western District of Missouri, as part of this plea

¹ Document 156
² Paragraph 7
³ Document 154

agreement, agrees not to bring *any* additional charges against the defendant *for any criminal offenses related to possession with intent to distribute methamphetamine* for which it has venue and *which arose out of the defendant's conduct described above.*" The plea agreement does state that the government is not foreclosed from prosecuting the defendant for violent crimes against another person or for crimes which the *United States Attorney for the Western District of Missouri has no knowledge.* [Emphasis added].

2. The conduct charged in case 09-00121 certainly arose out of the defendant's conduct as described in the plea agreement. In fact, the time frame and criminal activity in question is essentially the same.
3. The crimes charged in 09-00121-01 relate to possession with intent to distribute methamphetamine *and* arose out of the defendant's conduct as described in the plea agreement. The defendant's attorney understands that one federal prosecutor may not know what is happening with another federal prosecutor's case. Counsel is aware that federal agents sometimes do not share information willingly and often do not bother to cross-reference the information with other law enforcement agencies. However, that lack of "information sharing" should not be to the detriment of the defendant – the individual who waived his Constitutional right to trial and entered a plea in good faith.
4. The defendant maintains that the plea agreement did not limit the government's obligation regarding the filing of additional charges to information contained in paragraph 3 (the *factual basis*) of the plea agreement.

The factual basis in the plea agreement identifies the defendant as “Hill”. See Plea Agreement at Paragraph 3, page 3. The plea agreement identifies the defendant by name and by his moniker, a.k.a. “Hill”, as a methamphetamine distributor. *Id.* Further, the plea agreement states that the defendant, “[a]dmits and agrees that, on or about December 21, 2006, in Jackson and Hickory Counties, in the Western District of Missouri, he did knowingly and intentionally distribute and possess with the intent to distribute 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine, a Schedule II controlled substance.” *Id.*

5. The pending indictment charges the defendant with a continuing criminal enterprise for acts occurring between the dates of January 1, 2005 and December 27, 2006, which involved possession with intent to distribute methamphetamine. The two indictments certainly both contemplate the defendant’s distribution activities concerning methamphetamine in Jackson County, Missouri and the surrounding areas. The government states in the response motion that the previous plea agreement only contemplated one incident in which the defendant distributed 500 grams or more of methamphetamine. In fact, the plea agreement actually sets forth a factual basis which includes information that the defendant had been supplying the confidential informant with methamphetamine for 2-3 years in the amount of 2-3 pounds every two weeks between June of 2006 and December of 2006. The informant further admitted that the defendant had supplied him with

methamphetamine in smaller quantities for 2-3 years prior to the December of 2006 buy/bust.

6. Although the change of plea occurred in the Central Division of the Western District of Missouri, the plea agreement specifically states that the *United States Attorney for the Western District of Missouri* agrees not to bring any additional charges, as previously discussed in the foregoing paragraphs of this response motion, against the defendant. The present indictment was filed in the Western District of Missouri by the United States Attorney for the Western District of Missouri. As such, the present indictment violates the terms and conditions of the plea agreement in 07-04002-01.
7. Federal agents had information in their system concerning the defendant and his distribution activities, including his name and his moniker. This information was readily available and could easily have been obtained with a simple request by the agents involved. Failure to share this information may have resulted in the defendant receiving a shorter sentence. This is not the fault of the defendant and he should not be subject to additional charges simply because federal authorities did not access the information in their system to accurately determine the relevant conduct of the defendant.
8. The defendant concurs with the government that *United States v. Kelly*, 18 F.3d 612,616 (8th Cir. 1994) is controlling. The language of the plea agreement is unambiguous in that it states that further charges related to methamphetamine distribution will not be pursued by the United States Attorney's Office for the Western District of Missouri provided the conduct

arose out of the conduct described in the plea agreement. The defendant disagrees, however, with the statement that the government only agreed to forego charges related to the defendant's conduct described in the plea agreement. The plea agreement contemplates that the government cannot bring additional charges for *evidence in it's possession at this time...and which arose out of the defendant's conduct described above*. The language most relevant here is the "in it's possession" and "which arose out of" language. The pending indictment is based on conduct which arose out of the conduct *described* in the plea agreement. The two indictments reference the same time frame and the same criminal conduct. This information in the plea agreement is not limited to the Harrisonville, Missouri conduct, as stated in the government's response motion. The government's own plea agreement/factual basis, as drafted by the United States Attorney's Office, referenced Jackson County, Missouri and the Kansas City area as the defendant's home base for drug distribution.

9. The government further argues that it would be unfair to allow the defendant to plead to a "smaller sentence" in one division and avoid prosecution for undisclosed crimes. The plea agreement discusses two years worth of distribution activities by the defendant. Agents in Missouri were aware of the activities conducted by "Hill" and the plea agreement references the defendant by his name and his moniker. The information was available, even if it did not include every crime committed by the defendant. The government does not usually know of all criminal activity of every defendant prior to

completing a case, whether via plea or a trial. Almost all of the information was available had the agents cross-referenced with other local and federal agencies.

10. Finally, the defendant disagrees that Counts 13 and 14 should stand regardless. The plea agreement was violated when the indictment was returned on this case. The charges pending against the defendant should be dismissed, in whole, and the defendant should be allowed to serve his sentence on the prior case.

WHEREFORE, the defendant respectfully requests a hearing on this critical issue. Further, the defendant prays that this Indictment will be dismissed as it violates the plea agreement in Case 07-04002.

Respectfully submitted,

/s/ Jacquelyn E. Rokusek
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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2010, I electronically filed with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following attorney of record:

AUSA Bruce Rhoads

/s/ Jacquelyn E. Rokusek
Attorney for Defendant

