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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA)	CASE NO. 01-097-S-EJL
)	
vs.)	RESPONSE BY UNITED STATES TO
)	DEFENDANT CARLOS ARAIZA'S MOTION
JUVENTINO LARA,)	TO DISMISS AND TO DENY THE
GABINO MACIAS,)	GOVERNMENT'S MOTION FOR A
RAFAEL GUEDEA)	WARRANT
MARICELA MACIAS,)	
SEVERO RIVAS,)	
a/k/a el MECANICO,)	
CORNELIO CRISTOBAL,)	
ENRIQUE MORENO,)	
THOMAS LEE SMITH,)	
ALEJANDRO TAMAYO,)	
JOSE FLORENTINO RODRIGUEZ,)	
a/k/a TINO,)	
THOMAS EUGENE HAMMOND,)	
VICTOR HUGO PADILLA,)	
a/k/a CHITO,)	
JUAN LNU,)	
GABRIEL ORTIZ,)	
JULIO CESAR CHAVEZ,)	
a/k/a CHEPE,)	

RESPONSE BY UNITED STATES TO DEFENDANT CARLOS ARAIZA'S MOTION TO
 DISMISS AND TO DENY THE GOVERNMENT'S MOTION FOR A WARRANT - 1

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1 JOSE LUIS MACIAS,)
 CAIN RIVAS,)
 2 CARLOS GAYTAN,)
 GUILLERMO LOPEZ, a/k/a)
 3 DON CHUY,)
 MEDEL ESCAMILLA,)
 4 CECILIA YAMILETH MEDRANO,)
 IGNACIO NUÑEZ, a/k/a)
 5 NACHO,)
 JOSE ANGEL GAYTAN, a/k/a)
 6 NENE,)
 HUMBERTO RANGEL,)
 7 a/k/a ABRAN,)
 DAVID THOMAS GREER,)
 8 CELIDA TAMAYO RIOS,)
 MIKE MARTINEZ,)
 9 CARLOS ARAIZA,)
)
 10 Defendants.)
)

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12 The United States of America and Thomas E. Moss, United States
 13 Attorney for the District of Idaho, through Kim R. Lindquist,
 14 Assistant United States Attorney, respond to the above-referenced
 15 motions as follows:

16 Motion to Dismiss

17 Defendant Carlos Araiza moves to dismiss the misprision count of
 18 the Second Superseding Indictment for failure of that document to
 19 state a crime against him.

20 Rule 7(c)(1) of the Federal Rules of Criminal Procedure requires
 21 that an indictment be a "plain, concise, and definite written
 22 statement of the essential facts constituting the offense charged."
 23 An indictment taken as a whole need only contain those facts and
 24 elements of the alleged offense necessary to inform the accused of the
 25 charge so that he may prepare a defense and invoke the double jeopardy

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1 clause of the United States Constitution when appropriate. *United*
2 *States v. Hinton*, 222 F.3d 664, 673 (9th Cir. 2000).

3 Count Fifty-seven of the Second Superseding Indictment, with its
4 citation of 18 U.S.C. § 4, the legal reference to the text of that
5 statute and the factual cross referencing to Conspiracy Acts Category
6 No. 3 of Count Five of the Second Superseding Indictment, is
7 sufficient to inform the accused of the charge of misprision against
8 him. Indeed, the very nature of Defendant's motion confirms that
9 sufficiency, in that the Defendant argues specifically the pleading of
10 an element of that crime and the facts associated therewith. It
11 certainly cannot be said that the Defendant is not informed of what he
12 is charged with. At most, the Defendant's motion must be
13 characterized as one for a bill of particulars with regard to that
14 element. Otherwise, the Defendant has simply proclaimed his defense
15 at trial.

16 Therefore, this aspect of the Motion should be denied.

17 *Buckland*

18 The Defendant asserts that the Second Superseding Indictment
19 should be dismissed as to the Defendant by virtue of the *Buckland*
20 decision. Although Counsel acknowledges the Ninth Circuit declaration
21 that the case cannot be cited as precedent by virtue of its *en banc*
22 status, he does so nonetheless, claiming his "obligation to bring to
23 the Court's attention the existence of the case as it pertains to
24 Defendant Araiza. . . ."

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1 Counsel fails to understand what it means when the Ninth Circuit
2 indicates that a case may not be cited as precedent. It means that a
3 case may not be cited as precedent regardless of the justification
4 fabricated by an attorney. For purposes of the case at bar and
5 Defendant Araiza, legally there is no such thing as *United States v.*
6 *Buckland* and there is no obligation to advise the Court of non-
7 existent case law. It would seem that Counsel for Defendant Araiza
8 has directly violated an order of the Ninth Circuit, and this Court
9 should consider this aspect of the Motion accordingly.

10 Warrant

11 Counsel's position with regard to the Government's request for a
12 warrant is less than genuine. When the reality of the INS removal of
13 the Defendant if released pending trial was addressed at his detention
14 hearing, it was Counsel who claimed his ability to proceed
15 administratively with the INS and have the Defendant released from
16 their custody pending those proceedings as well as trial. However, it
17 would seem that Counsel did no such thing. Upon the Defendant's
18 apparent removal from Idaho to Seattle, there is no indication that
19 Counsel or the Defendant attempted a procedural release of the
20 Defendant from INS custody. Moreover, the Defendant left the
21 jurisdiction without having the permission of the United States
22 Probation Office. Defendant then acknowledges his acquiescence in his
23 deportation to Mexico from Seattle by the INS.

24 What the Government sees is an attorney's specific and
25 preexisting plan to have his client released from this Court on
26

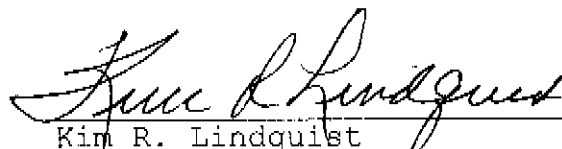
1 standard conditions and then have him deported to Mexico so as to
2 avoid the Federal charges, specifically what the United States warned
3 the Magistrate Court to guard against in releasing him. Not only did
4 the Magistrate Court err in releasing the Defendant under such
5 circumstances, Counsel and the Defendant, it would seem, calculated
6 his unavailability in direct relation thereto. Under these
7 circumstances, a warrant should definitely issue.

8 Summary

9 The motion or motions of the Defendant should be denied in their
10 entirety.

11 DATED this 3 day of January, 2002.

12 THOMAS E. MOSS
13 United States Attorney

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15 Kim R. Lindquist
16 Assistant United States Attorney

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that I am an employee in the office of the United States Attorney for the District of Idaho; that on the 3 day of January, 2002, a true and correct copy of the foregoing Response by United States to Defendant Carlos Araiza's Motion to Dismiss and to Deny the Government's Motion for A Warrant was faxed, hand delivered or mailed by United States mail, postage prepaid, to the persons whose names are listed below.

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