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Arizona State Bar No. 004156
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6 **IN THE UNITED STATES DISTRICT COURT**
7
8 **FOR THE DISTRICT OF ARIZONA**

9 **UNITED STATES OF AMERICA,) NO. 4:10-cr-03019-DCB -CRP**
10 **Plaintiff,)**
11 **s.) 1) RENEWED MOTION TO DISMISS**
12 **RICARDO MENDEZ, JR.,) FOR PRE- INDICTMENT DELAY**
13 **Defendant,) 2) VIOLATION OF BRADY**
14 _____)

15 **COMES NOW** Mr. Mendez, by and through undersigned counsel of record,
16 John D. Kaufmann, and moves pursuant to the Fifth and Sixth Amendments to the
17 United States Constitution to dismiss the above captioned matter against Defendant
18 Ricardo Mendez, Jr. Mr. Mendez, Jr. has filed several motions in this case including
19 Motion to Dismiss for Pre-Indictment Delay (DOC 93) and Motion for Brady
20 Material (DOC 102). In Response, the government filed opposition to Defendant’s
21 Motion to Dismiss for Pre-Indictment Delay, DOC 101 and United States’ Response
22 to Defendant’s Motion for Brady Material, DOC 109. In both oppositions, the
23 government mislead this Court. Attached and incorporated by reference herein are
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25

1 three exhibits. Exhibit A is an e-mail from Michael Detty. Mr. Detty is a Tucson
2 firearms dealer who became the lead ATF agent-informant. The e-mail goes to Laura
3 Gwinn, Assistant United Attorney handling this case for the Department of Justice.
4

5 The e-mail reads as follows:

6 *Laura, I spoke with the first AUSA that was on wide*
7 *receiver. He told me the reason he chose not to prosecute*
8 *it was because ATF lied to him and said that the guns*
9 *were being followed-intradicted by the Mexican*
10 *authorities on the other side of the border. This is also*
11 *what they had told me. The next AUSA chose not to*
12 *prosecute for the same reason. If you were not aware of*
13 *this...now you are. I'd hate to think that your integrity is*
14 *flexible. Best regards, Mike Detty. See Exhibit A.*

15 Exhibits 2 is an article from the Arizona Daily Star dated October 6th, 2011
16 and appearing on the front page of the newspaper. Article describes “Operation
17 Wide Receiver” in which Tucson firearms dealer Michael Detty was encouraged to
18 sell firearms to people he thought were drug cartel agents. Exhibit 3 is a CBS news
19 report dated October 5th, 2011 identifying ATF sting operation with Michael Detty as
20 its agent/informant.

21 In Defendants Motion to Dismiss for Pre-Indictment Delay, Mr. Mendez
22 argued that from October 2007 through date of indictment, October 2010, the
23 government failed to pursue criminal charges against Mr. Mendez for inappropriate
24 reasons, prejudicing Mr. Mendez through the loss of important witnesses. In its
25 Opposition, the government argued that the delay was a result of Ms. Gwinn’s busy

1 schedule and Assistant United States Attorneys from the District of Arizona either
2 being reassigned or appointed a magistrate judge. Nothing was disclosed about the
3 Department of Justice or the United States Attorney's Office shopping for a Assistant
4 United States Attorney who would have no qualms about prosecuting cases where
5 ATF agents lied. The government has not produced any disclosure concerning ATF
6 agents lying to prosecutors which would clearly be Brady material and crucial
7 evidence to Mr. Mendez.
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10 Defendant moved for Brady material, alleging ATF agents encouraged gun
11 dealers to inculcate people they believed to be agents of drug cartels. Apparently Mr.
12 Mendez' speculation was right on target as described in Exhibits 2 and 3.
13

14 The government's Response to the Brady motion identified Mr. Mendez'
15 request as being wholly "without merit" and that the allegations that the government
16 encouraged dealers to sell firearms to suspected drug cartel associates, "wholly and
17 completely irrelevant" to his case. The newspaper article attached to Defendant's
18 Motion for Brady referred to another similar operation called Fast and Furious. This
19 operation, Wide Receiver, was the exact same as Fast and Furious. The governments
20 response was inaccurate, misleading, and a clear violation of Brady.
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23 While the Assistant United States Attorney in charge of prosecuting this case
24 is not from Tucson, all federal prosecutors have the same duty, not only to criminal
25 defendants but also to the Court. That duty is to be truthful and honest. When the

1 Department of Justice refused to disclose dishonesty among its ATF agents as being
2 the reason for delay, the truth of the delay is of such a dimension that it would violate
3 those fundamental concepts of justice that lie at the base of our judicial institutions.
4 *Mooney v. Holohan*, 294 U.S. 103(1935); *United States v. Sparks*, 87 F.3d
5 276(1996). Furthermore, under *Brady v. Maryland*, 373 U.S. 83(1963) the
6 government has an affirmative duty to disclose exculpatory evidence if its material
7 either to guilt or to punishment. See also, *Lopez v. Ryan*, 630 F.3d 1198(9th Cir.
8 2011); *Mitchell v. Goldsmith*, 878 F.2d 319(9th Cir. 1989). In this case, it is certainly
9 material to Mr. Mendez' guilt or innocence if the ATF agents in this case are known
10 liars and have lied to the US Attorney's Office in the District of Arizona.
11 Furthermore, it is certainly material and relevant that ATF hired Mr. Detty as a
12 confidential informant, paying him extraordinary amounts of money to inculcate
13 innocent people such as Mr. Mendez. The information is material and relevant
14 concerning his guilt or innocence. It may also be relevant in establishing whether
15 there is an entrapment defense. Nonetheless, operation Wide Receiver and operation
16 Fast and Furious were the exact same operations, two years apart. The government
17 in this case intentionally misdirected Defendant Mendez by its response both in the
18 Motion to Dismiss for Pre-Indictment Delay and its Response to Defendant's Motion
19 for Brady Material. As a result, Mr. Mendez requests that all charges against him be
20 dismissed with prejudice.
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RESPECTFULLY SUBMITTED this 7th day of October, 2011.

s/ John D. Kaufmann

John D. Kaufmann