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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

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

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

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

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

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

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

schedule and Assistant United States Attorneys from the District of Arizona either being reassigned or appointed a magistrate judge. Nothing was disclosed about the Department of Justice or the United States Attorney's Office shopping for a Assistant United States Attorney who would have no qualms about prosecuting cases where ATF agents lied. The government has not produced any disclosure concerning ATF agents lying to prosecutors which would clearly be *Brady* material and crucial evidence to Mr. Mendez.

Defendant moved for *Brady* material, alleging ATF agents encouraged gun dealers to inculpate people they believed to be agents of drug cartels. Apparently Mr. Mendez' speculation was right on target as described in Exhibits 2 and 3.

The government's Response to the Brady motion identified Mr. Mendez' request as being wholly "without merit" and that the allegations that the government encouraged dealers to sell firearms to suspected drug cartel associates, "wholly and completely irrelevant" to his case. The newspaper article attached to Defendant's Motion for Brady referred to another similar operation called Fast and Furious. This operation, Wide Receiver, was the exact same as Fast and Furious. The governments response was inaccurate, misleading, and a clear violation of *Brady*.

While the Assistant United States Attorney in charge of prosecuting this case is not from Tucson, all federal prosecutors have the same duty, not only to criminal defendants but also to the Court. That duty is to be truthful and honest. When the

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

RESPECTFULLY SUBMITTED this 7th day of October, 2011.

s/ John D. Kaufmann
John D. Kaufmann