

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-151

FRANCISCO NMI MARTINEZ

Green Bay Division

Defendant.

GOVERNMENT RESPONSE TO MOTION FOR BILL OF PARTICULARS

The United States of America, by its attorneys, Matthew D. Krueger, United States Attorney for the Eastern District of Wisconsin, and William J. Roach, Assistant United States Attorney, provides the following response in opposition to the defendant's motion for a bill of particulars.

The Defendant moves for a bill of particulars seeking additional details concerning the members and scope of the conspiracy charge filed in Count One of the Superseding Indictment. While Federal Rule of Criminal Procedure 7(f) authorizes the court to direct the government to file a bill of particulars, the test utilized for whether a bill of particulars is needed centers around the sufficiency of the indictment and the discovery material provided to the defendant prior to trial. *United States v. Hernandez*, 330 F.3d 964, 975 (7th Cir. 2003); *United States v. Andrus*, 775 F.2d 825, 843 (7th Cir. 1985).

The Superseding Indictment provides factual and legally sufficient notice to the Defendant of the conspiracy charge. It identifies the length of the conspiracy, its members, the specific drugs

distributed or possessed with the intent to distribute, and the statutes violated. The Superseding Indictment also detail specific charges related to other members of the conspiracy. Should Martinez's case proceed to trial, the government has advised counsel for Martinez that it likely will seek a Second Superseding Indictment adding substantive charges against him including the distribution of fentanyl pills on or about May 30, 2019. "An indictment which includes each of the elements of the offense charged, the time and place of the accused's conduct which constituted a violation, and a citation to the statute or statutes violated is sufficient" to overcome a bill of particulars demand. *United States v. Fassnacht*, 322 F.3d 440, 446. (7th Cir 2003).

A bill of particulars is also not required when information necessary for a defendant's defense can be obtained through "some other satisfactory form" such as the discovery procedures. *Id.* at 447 n.2. The government is following the "open discovery" procedure in this case and has provided the Defendant with interviews and proffered statements from numerous cooperating witnesses identifying the members and scope of the conspiracy. The specific names of several of these individuals, although redacted in police reports, is nonetheless readily identified when read in context. Moreover, thirty days prior to trial, the government agrees to provide the Defendant with the names and Brady/Giglio material relating to confidential sources and cooperating witnesses not otherwise known to the Defendant. Evidentiary details of the government's case are specifically not subject to discovery by means of a bill of particulars. *United States v. Glecier*, 923 F.2d 496, 501 (7th Cir 1991). Simply stated, the defendant is entitled to know the offense with which he is charged, but he is not entitled to know the details of how it will be proved.

In sum, the combination of both detailed charges in the Superseding Indictment and the governments "open discovery" procedure followed in this case provide sufficient notice to the

Defendant. A bill of particulars is not warranted in this case.

Dated this 19th day of March, 2020.

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By:

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