

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

VS.

CRIMINAL NO. 3:08-cr-00107-DPJ-LRA-2

**FRANK E. MELTON,
MICHAEL RECIO and
MARCUS WRIGHT**

DEFENDANTS

DEFENDANT, MICHAEL RECIO'S, MOTION TO DISMISS

Comes now the Defendant, Michael Recio, by and through counsel, and files this Motion to Dismiss the charges pending against him, and in support thereof sets for the following:

1. Michael Recio is charged in a three (3) count indictment with, first of all, conspiracy to violate Title 18 U.S.C. § 241 which is the violation of the civil rights of someone based on their right to be free from unreasonable searches and seizures of those acting undercover of law; in Count 2 with the same offense based on the wielding of a firearm by Marcus Wright and sledgehammers wielded by several young men; and in Count 3 with jointly carrying a firearm with Frank Melton and Marcus Wright.

2. There are no specific allegations against Michael Recio other than he allegedly shot stood guard while Frank Melton ordered and participated in the destruction of the home located at 1305 Ridgeway Street in Jackson, Mississippi.

3. A review of 18 U.S.C. § 241, 242 and 924 makes it clear that on the face of the indictment there is no felony adequately charged against Michael Recio.

4. The most that the Government can allege against Michael Recio is that he "stood guard" while others destroyed the afore described property, and the most they can charge him with is

if the injuries that occur are diminimous then the resulting penalty is a misdemeanor as set out in 18 U.S.C. § 242.

5. The prosecution has produced nothing in the discovery that would support any participation other than that specifically set out in the indictment, the felony charges fail on the face of the indictment.

WHEREFORE PREMISES CONSIDERED, the Defendant respectfully requests that this Court enter an order dismissing this cause without prejudice.

This the 6th day of October, 2008.

Respectfully submitted,

/s/ Cynthia A. Stewart
Cynthia A. Stewart
ATTORNEY FOR MICHAEL RECIO

Of Counsel:

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CERTIFICATE OF SERVICE

I, the undersigned attorney for the Defendant herein, do hereby certify that the above and foregoing is being filed with the Clerk of this Court by electronic filing and will be served via e-mail by the Clerk of this Court to the following:

John M. Collette, Esq.
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Further, a copy has been delivered via First Class United States Mail, postage prepaid to:

Michael Recio
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Terry, MS 39170
Mrecio@city.jackson.ms.us

This the 6th day of October, 2008.

/s/ Cynthia A. Stewart
Cynthia A. Stewart