UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

CRIMINAL ACTION NO. 5:06CR-19-R

UNITED STATES OF AMERICA PLAINTIFF

vs.

STEVEN D. GREEN DEFENDANT

UNITED STATES' RESPONSE TO DEFENDANT'S MOTION
TO CONDUCT ORAL ARGUMENT

Comes the United States of America, by counsel, for its response to the motion of the Defendant, Steven D. Green, for oral argument regarding his Motion to Dismiss (R. 92) and Motion to Dismiss for Lack of Jurisdiction (R. 99). In support of his motion, Green asserts that he is the first former soldier to be prosecuted in United States District Court for conduct which took place while he was serving in the military, and that his Motion to Dismiss and Motion to Dismiss for Lack of Jurisdiction raise issues of first impression before a federal court.

The United States respectfully submits that oral argument is not necessary for the Court to resolve the issues raised in the Defendant's two motions to dismiss. The issues have been extensively briefed by the parties. In addition, during a telephonic further proceeding conducted in connection with the entry of the Court's pretrial scheduling order, the issue of setting specific dates for oral argument was expressly discussed by the parties, and rejected by the Court as unnecessary, the Court indicating that it would schedule argument on motions if it deemed, in the

Court's discretion, oral argument to be helpful in ruling upon a particular issue. Finally, although prosecutions under the Military Territorial Jurisdiction Act, 18 U.S.C. § 3261, such as this are by no means routine, Green is not the only former soldier to be prosecuted in United States District Court under MEJA, nor are his motions to dismiss issues of first impression before a federal court. In United States v. Jose Luis Nazario, Jr., EC CR 07-127-SGL (C.D. CA 4/28/2008), the Court denied the motion to dismiss brought by Nazario, a former United States Marine, who has been charged by a federal grand jury with two counts of voluntary manslaughter which are alleged to have occurred in November 2004, during the Battle of Fallujah in Iraq, while the Defendant was still on active duty in the military. The court in that case concluded:

> The express language of this statute provides federal courts with jurisdiction to hear criminal cases where, as here, the alleged crime was committed prior to discharge from the Armed Services.
>
> Given the clear and unambiguous language of the statute, and the reasonableness of a statute that prevents discharge from the military from serving as a shield to prosecution for crimes committed while in military service, this Court declines defendant's invitation to explore the thicket of congressional intent surrounding the statutes implementation.

For the foregoing reasons, the United States believes the oral argument requested by the Defendant on his motions to dismiss to be unnecessary. Should the Court disagree, and conclude that oral argument would, in fact, be helpful, the United States will be prepared to argue its

position which has been fully set forth in its responses to Defendant's Motion to Dismiss and the Motion to Dismiss for Lack of Jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 12, 2008, I electronically filed this with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to Scott T. Wendelsdorf, Federal Defender: Patrick J. Bouldin, Assistant Federal Defender; and Darren Wolff, counsel for Defendant, Steven D. Green.

/s/ Marisa J. Ford
Marisa J. Ford
Assistant U.S. Attorney