

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**UNITED STATES OF AMERICA,** )  
 )  
 **Plaintiff,** )  
 )  
 v. )  
 )  
 **FERNANDO GUEVARA-GUEVARA,** )  
 )  
 **Defendant.** )  
 )

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**Case No. 16-20017-01-CM**

**MEMORANDUM AND ORDER**

Defendant Fernando Guevara-Guevara has entered a plea of guilty in this case but has not yet been sentenced. The sentencing hearing is currently not scheduled because new counsel was recently appointed. After entering his plea, defendant filed a motion to dismiss for violation of his Sixth Amendment rights (Doc. 89).

The issues presented in defendant’s motion to dismiss are familiar in this District. Defendant claims that he is the victim of practices of the United States Attorney’s Office and Correctional Corporation of America (CCA), whereby video and audio recordings of privileged attorney-client communications were made, obtained, and potentially reviewed. These allegations are being addressed in *United States v. Black, et al.*, 16-cr-20032-JAR.

In this case and others, defendants have filed motions to dismiss pending criminal cases based on the allegations raised in *Black*. Likewise, a number of convicted defendants have filed related § 2255 motions, either pro se or through the FPD’s office. This court’s practice to date has been to delay briefing on the § 2255 motions until the *Black* issues are resolved. Likewise, the court finds it proper to refrain from making substantive rulings on the allegations in motions to dismiss based on *Black*

issues. Evidence is not presently available for review, and this court does not wish to interfere with the ongoing *Black* litigation until after Judge Robinson has issued final rulings.

For these reasons, the court determines that defendant's motion to dismiss should be denied. This ruling does not mean that defendant will never be entitled to any relief based on his allegations. After judgment is entered in this case, defendant may again raise these allegations in a § 2255 motion. But in any event, the allegations do not merit dismissal of defendant's case at this time.

**IT IS THEREFORE ORDERED** that defendant's motion to dismiss (Doc. 89) is denied.

Dated this 25th day of June, 2019, at Kansas City, Kansas.

**s/ Carlos Murguia**  
**CARLOS MURGUIA**  
**United States District Judge**