



venue is necessary here because *the indictment alleges no facts from which this Court could conclude that venue is proper in this District.*

Contrary to the Government's assertion, we do not "conflate" the concept of a contested evidentiary hearing with the consideration of extrinsic evidence. We well understand the distinction. In its Response, the Government expressly concedes "that there is legal authority from this District and elsewhere in support of the proposition that a district court can rule on a pretrial motion to dismiss for lack of venue based on extrinsic evidence." Resp. at 3. That is all we ask. Even the Government must acknowledge, however, that extrinsic evidence can come in many forms, whether it is court documents or the factual proffer relied upon by the Government in opposing our motion or in the form of Mr. Ridgeway's testimony. Simply because the Defendants seek to introduce that evidence or that the evidence is testimonial in nature does not make it any less "extrinsic evidence" to be considered by the Court.

Furthermore, the Government itself has opened the door to the presentation of extrinsic evidence in the form of testimony from Mr. Ridgeway. In arguing both that Mr. Ridgeway was a "joint offender" and that he was "arrested" for purposes of 18 U.S.C. § 3238, the Government invokes a plethora of extrinsic evidence including: (1) numerous publicly-filed documents in this case; (2) numerous publicly filed documents in Mr. Ridgeway's case; (3) other publicly-filed documents such as the arrest warrant affidavit for Mr. Ridgeway and the factual proffer in support of Mr. Ridgeway's plea; and (4) a lengthy unsworn factual proffer recounting the events surrounding Mr. Ridgeway's arrest (see Gov't Opp. at pp. 4-6). Further, the Government has no choice but to rely on such extrinsic evidence because the indictment fails to allege any facts from which this Court could conclude that venue is proper in this District. In stark contrast, in *United States v. Jensen*, 93 F.3d 667 (9th Cir. 1996), a case on which the Government heavily relies, the

Ninth Circuit held that extrinsic evidence was not necessary because the charging documents there alleged facts, namely, the last known residences of the defendants, that properly established venue under section 3238 in the Western District of Washington. The indictment in this case fails to allege any facts whatsoever supporting venue in this District.

Because of its failure to allege facts supporting venue in the indictment (along with the question of whether the Government ever submitted facts to the grand jury sufficient to support venue in the indictment), the Government now proffers to the Court an extensive proffer of facts related to Mr. Ridgeway's arrest. To a large extent, that proffer appears to be a summary of what Special Agent John M. Patrini would be expected to say if he testified at the hearing. In essence, the Government would have the Court rely merely on its own self-serving rendition of Agent Patrini's testimony. Clearly, however, the person having the most relevant information about his arrest, as well as his role as a joint offender, is Mr. Ridgeway himself. Mr. Ridgeway, as the Court knows, is cooperating as a Government witness and, as such, we would expect that the Government would proffer and accept Mr. Ridgeway's testimony regarding the venue issues as truthful. Consequently, there would be no disputed issues of fact arising from Mr. Ridgeway's testimony.

Again, we emphasize that we are not asking the Court to decide disputed facts; but, rather to make legal determinations, i.e., whether Mr. Ridgeway was "arrested" or whether he is a "joint offender," based upon a *sufficient factual basis*, given that the indictment fails to allege any facts regarding venue. The Government is not entitled to force the Court to rely merely on the facts that it proffers in support of its position. The defense has an equal right to present extrinsic evidence that bears on the issue. In this respect, Mr. Ridgeway's testimony is an important source of "extrinsic evidence" that the Court should consider. For example, it would

be relevant and appropriate to ask Mr. Ridgeway questions as to (1) whether he believed he was being restrained in any manner; (2) whether he believed he was under arrest; or (3) whether he committed any of these offenses jointly with each of the other Defendants. The evidentiary hearing we propose is confined to a very limited set of facts. The testimony of Mr. Ridgeway will not put the Court in a position of resolving factual disputes, but instead will provide the Court the essential undisputed facts necessary to make the appropriate legal conclusions.

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Respectfully submitted,

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