

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA)	
	)	CASE NO. 97-0853-CR-NESBITT
v.)	
	)	Magistrate Judge Robert L. Dubé
	)	(February 11, 1998 Order of Reference)
)	
ATLAS IRON PROCESSORS, INC.,	)	MOTION TO STRIKE
et al.,	)	JOINT RESPONSE OF
	)	DEFENDANTS ANTHONY J.
Defendants.	)	GIORDANO, SR., ANTHONY J.
	)	GIORDANO, JR., AND DAVID
	)	GIORDANO TO GOVERNMENT'S
	)	REPLY AND PROPOSED ORDER
	)	PRECLUDING DEFENDANTS
	)	FROM PRESENTING ANY ALIBI
	)	<u>WITNESSES AT TRIAL</u>

Pursuant to Local Rule 7.1C(2), the United States moves to strike the *Joint Response of Defendants Anthony J. Giordano, Sr., Anthony J. Giordano, Jr., and David Giordano to Government's Reply and Proposed Order Precluding Defendants from Presenting Any Alibi Witnesses at Trial* ("Joint Surreply"), which the Giordano defendants filed on July 9, 1998.

The procedural posture of this issue is as follows. On April 20, 1998, pursuant to Fed. R. Crim. P. 12.1(a), the United States filed separate demands for each of the Giordano defendants requesting notice of intention to offer a defense of alibi. See Demands of Notice Pursuant to Rule 12.1 of Defendants Anthony J. Giordano, Sr., Anthony J. Giordano, Jr. and David Giordano's Intention to Offer Defense of Alibi. Each of the Giordano defendants responded to the government's demand. On June

17, 1998, the United States replied to each Giordano defendant's response, and also filed proposed orders precluding each Giordano defendant from presenting any alibi witnesses at trial. *See Orders Precluding Defendants Anthony J. Giordano, Sr., Anthony J. Giordano, Jr. and David Giordano from Presenting Any Alibi Witnesses Identified in the Notice of Demand Served Upon the Defendant Pursuant to Fed. R. Crim. P. 12.1.*

On June 18, 1998, the Giordano defendants filed a motion requesting additional time to file a **surreply** response to the United States's reply brief and proposed orders. *See Unopposed Joint Motion of Anthony J. Giordano, Sr., Anthony J. Giordano, Jr. and David Giordano for Enlargement of Time Within Which to Responds to the Government's Proposed Order Precluding Each Defendant from Presenting Any Alibi Witnesses, and Joint Response to Government's Reply Concerning Notice of Intention to Offer Defense of Alibi.*

When the Giordano defendants finally filed their Joint Surreply on July 9, 1998, it was fourteen pages long -- a full four pages more than allowed under L.R. 7.1C(2). The Giordano defendants neither sought prior permission of this Court to file their enlarged surreply response; nor did they file a motion seeking permission

from this Court to do so *instanter*. Consequently, the United States moves to strike the Giordano defendants' Joint Surreply. A proposed Order is attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the following:

- 1) *Motion To Strike Joint Response of Defendants Anthony J. Giordano, Sr., Anthony J. Giordano, Jr., and David Giordano To Government's Reply and Proposed Order Precluding Defendants From Presenting Any Alibi Witnesses At Trial; and*
- 2) *Order Granting United States' Motion To Strike Joint Response of Defendants Anthony J. Giordano, Sr., Anthony J. Giordano, Jr., and David Giordano To Government's Reply and Proposed Order Precluding Defendants From Presenting Any Alibi Witnesses At Trial.*

were sent via Federal Express to the Office of the Clerk of Court on this 22nd day of July, 1998. Copies of the above-captioned pleadings also were served upon the defendants via U.S. Mail on this 22nd day of July, 1998.

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