

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA)
) Case No. 97-0853-CR-Middlebrooks
 v.)
) Magistrate Dubé
 ATLAS IRON PROCESSORS, INC.,) (Amended order of reference dated May 7, 1998)
 et al.,)
)
 Defendants.) **MEMORANDUM OF THE**
) **UNITED STATES OPPOSING**
) **MOTION OF DEFENDANT**
) **ANTHONY J. GIORDANO, SR.**
) **FOR A TRIAL CONTINUANCE**

The United States opposes Defendant Anthony J. Giordano, Sr.'s motion to continue the trial in this matter.

1. On December 31, 1998, Robert C. Josefberg, attorney for defendant Anthony J. Giordano, Sr., filed a *Notice of Trial Conflict* with this Court. In the concluding sentence of his Notice, Josefberg moved to continue the trial in this matter.

2. The trial is set to begin on January 25, 1999. The grand jury indicted the defendants on November 13, 1997. This matter was originally set for trial in February 1998. The trial date was then moved to November 23, 1998. The current trial date was set at the September 9, 1998, hearing. This is the defendants' third recent attempt to continue this trial.

3. The instant Motion is out of rule because Giordano, Sr. has violated Local Rule 7.6 which requires the submission of an affidavit setting forth a full showing of good cause. Failing to file an affidavit is not merely a technical violation of the Local Rules. At the September 9, 1998, hearing where the Court established the current trial date, Mr. Josefberg did not mention his trial conflicts. Presumably his conflicting trials were scheduled sometime after September 9, 1998. If this is so, Mr. Josefberg owes the Court, his client, the other defendants, and the United States

an explanation of, *inter alia*, when his conflicting trials were scheduled and what steps he has taken to resolve his conflicts with the state courts.

4. The Speedy Trial Act provides that, to grant a continuance for which time under the Act is excludable, the Court must make a specific finding that the reasons for granting the continuance “outweigh the best interests of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(8)(A). The defendant has offered no evidence to meet his burden of showing why a continuance outweighs the best interests of the public and the defendants in a speedy trial.

5. This latest motion is consistent with the defendants’ calculated strategy to continue this case. The parties have already engaged in more than a year of extensive pre-trial discovery and litigation. Granting a continuance would serve only to reward the defendants’ delay tactics and prejudice the United States by the resulting delay.

Respectfully submitted,

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