

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN THE MATTER OF THE)
REPRESENTATION OF MULTIPLE)
TARGETS:) No. EP-06-CR-1369-FM
)
CHARLES ROARK,)
MILTON "MICKEY" DUNTLEY, and)
ERNIE LOPEZ)

OPPOSITION TO GOVERNMENT'S MOTION FOR LEAVE TO FILE RESPONSE
AND OPPOSITION TO MOTION TO STRIKE OUT OF TIME

The Government seeks leave to file an out-of-time response to counsel's Motion to Strike. The undersigned believes such motion should be denied for the following reasons:

I.

Counsel's Motion to Strike was filed on June 19, 2007. The Government's response, if any, was due in eleven days, or on July 2, 2007.¹ One day after that due date, the Government requested additional time from the Court to respond to the Motion to Strike. At that time, the undersigned did not oppose the motion, being based on an oversight in the United States Attorney's office that resulted in Mr. Lewis not having seen the Motion to Strike.

¹ The 11 days ran on Saturday June 30th. The response was therefore due the following Monday.

II.

The Court granted the Government's request for additional time to respond, and both Assistants United States Attorney Kanof and Lewis were so notified that the Court ordered the deadline extended until July 13, 2007.

III.

On Monday July 16, 2007, the undersigned's secretary called the assigned secretary at the United States Attorney's office to determine whether a response had been filed but not received by counsel.² She was informed that the Government had not filed a response to the Motion to Strike.

IV.

Now, two days after counsel's inquiry and five days after the extended due date, the Government is requesting additional time to respond to the Motion to Strike. Such leave is (1) premature, since the response is not apparently ready to be filed,³ and (2) should only be granted in extraordinary circumstances. There are no extraordinary circumstances stated in the Government's motion. The basis of the initial request for additional time was that only Ms. Kanof, not Mr. Lewis, was served with the motion.⁴ Now the additional time is because only Mr. Lewis, not Ms. Kanof knew of the deadline. Although the first explanation was perfectly plausible, since Mr. Lewis was not entered into the filing system (which has been corrected); the second oversight is not easily understood or excused, because Ms. Kanof would have seen the

² Since counsel is not part of the electronic filing system in this case, counsel thought perhaps something was filed that was neither docketed nor served on counsel.

³ Procedurally, a deadline may only be extended before it expires. Once expired, a request for leave to file out-of-time is filed simultaneously with the proposed filing.

⁴ At that time only Ms. Kanof was entered into the electronic filing system and therefore received electronic notification.

motion to strike upon her return to the country two weeks ago, would have known the deadline was past due, and would have received notice of the Court's Order extending the response date. This is all true, even if there were no communication between the assistants working on this matter.

V.

Particularly given the fact that the basis for the Motion to Strike pertains to irregularities in the Government's filings in this matter, it would not be justified to grant this extraordinary leeway in filing a tardy response.

WHEREFORE, it is respectfully requested that the Court deny the Government's motion for leave to file its response to the motion to strike out-of-time, consider the motion to strike on its merits without response, and therefore grant the motion to strike.

Respectfully submitted,

By: s/ Mary Stillinger
MARY STILLINGER
Texas Bar No. 19239500
4911 Alameda Ave.
El Paso, Texas 79905
(915) 775-0705
FAX: (915) 775-1337
E-mail: stillingerlaw@sbcglobal.net

CERTIFICATE OF SERVICE

I certify that on this 19th day of July, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to the following:

Assitant U.S. Attorney,
Debra P. Kanof
Bill Lewis

By: s/Mary Stillinger

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ORDER

On this date, came to be considered the Opposition to Government's Motion for Leave to File Response and Opposition to Motion to Strike out of Time filed by attorney Mary Stillinger. The Court finds that the Government's Motion for Leave to File Response and the Government's Motion to Strike out of Time should be DENIED.

SIGNED and ENTERED this _____ day of July, 2007.

FRANK MONTALVO
UNITED STATES DISTRICT JUDGE