

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**UNITED STATES OF AMERICA**

**PLAINTIFF**

**VS.**

**CRIMINAL NO. 3:08-cr-00107-DPJ-LRA-2**

**FRANK E. MELTON,  
MICHAEL RECIO and  
MARCUS WRIGHT**

**DEFENDANTS**

**REPLY OF DEFENDANT RECIO TO THE GOVERNMENT'S RESPONSE  
TO DEFENDANT RECIO'S MOTION FOR SEVERANCE  
AND/OR RELIEF FROM PREJUDICIAL JOINDER**

COMES NOW, the Defendant, Michael Recio, by and through counsel and respectfully files this Reply of Defendant Recio to the Government's Response to Defendant Recio's Motion for Severance and/or Relief from Prejudicial Joinder, and in support thereof would show the following:

1. The Government basically concedes in its response that it intends to offer admissions by Frank Melton. Melton has made numerous admissions to the media, in the Affidavit attached to Defendant Recio's initial motion and in his pleadings filed with the Court regarding his behavior the night in question. He also maintains that Defendant Recio, did not participate in any of this conduct. Given the vast number of admissions made by Melton and the dearth of evidence against Recio, there is no way to separate in any juror's mind the admissions by Melton and to give Recio a fair trial, effective assistance of counsel and due process untainted by said admissions.

2. The Government plays that the ends of justice when it asserts that "because Melton is alleged to have engaged in his criminal conduct, not only with Defendant Recio, but also with cooperating Defendant Wright and several young men

who assisted the Defendants, even the statement using the plural pronoun “we” would not directly implicate Defendant Recio, in any criminal conduct.” It is precisely this kind of admission that will prejudice Recio’s rights guaranteed him by the United States Constitution to a fair trial, effective assistance of counsel and due process.

3. The decision whether or not to testify is one generally not made by defense counsel and defendant finally, until it is time to present the defense. Whether or not a defendant chooses to take the stand depends on many factors that cannot be known prior to the actual trial. It is noteworthy here that Melton did not testify in the State trial on what are basically the same charges. While he asserts here in the media that he intends to take the stand and tell the whole story, there is no way to guarantee this. He may, in fact, follow advice of counsel as he did in the State case and not take the stand. In this event, Recio is irreparably harmed in that he cannot call his best witness to testify that he did not participate in the conduct in question.

4. The facts in the case law cited by Defendant Recio, and the Government support the severance in the case in question. The factors listed by the Government against severance, that is judicial economy, apply only when the facts do not mandate a severance under the United States Constitution as they do here.

5. In addition, discovery recently filed by the Government indicates that the evidence against Mr. Melton is of a far different and greater quality than that against Mr. Recio. The Government asserts that it

“anticipates offering evidence that prior to August 26, 2006, Melton was warned by the Mississippi Attorney General to cease committing unconstitutional searches and seizures and he was warned by Jackson Police Officers on several occasions that he could not force his way into places without the consent of the tenant or seize, or seize

personal property in the absence of probable cause in a warrant.”

6. Aside from whether or not such constitutes inadmissible hearsay, it violates the rights of Michael Recio to a fair trial, effective assistance of counsel and due process.

7. Michael Recio was assigned by the Jackson Police Department to the Mayoral Detail. All he did was comply with the requirements of his job. To try him with someone who is willing to so testify as well as someone who is the subject of a mountain of evidence that does not apply to Michael Recio, simply violates any sense of fairness set forth in the United States Constitution.

8. While Mr. Recio appreciates the Government’s analysis of his defense, it is incorrect. Not only was Mr. Recio not involved in the activity in question, he was assigned to protect the mayor. The mayor, Defendant Melton, is the crucial witness in Mr. Recio’s defense, and any other attempt to set forth the defense destroys Mr. Recio’s ability to put on his defense in a manner consistent with due process, a fair trial and effective assistance of counsel.

9. The Court should consider certain factors in deciding to sever. These weigh in favor of Michael Recio and include: 1) the significance of the alleged exculpatory testimony in relation to the Defendant’s theory of defense. It is of great significance that the Mayor and Recio’s boss would testify in his favor; 2) the extent to which the Defendant might be prejudiced by the absence of the testimony. If Melton chooses not to testify and cannot be compelled to testify, then a crucial element of the defense will be lost in that Melton, Recio’s boss, explains his presence on the scene as

part of his job; 3) judicial administration and economy; and 4) the timeliness of the motion. *United States v. Butler*, 611 F.2d 1066, 1071 (5<sup>th</sup> Cir. 1980).

WHEREFORE, PREMISES CONSIDERED, the Defendant, Michael Recio, respectfully requests that this Court enter an order of severance and/or grant relief from prejudicial joinder.

This the 29<sup>th</sup> day of October, 2008.

Respectfully submitted,

/s/ Cynthia A. Stewart  
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**CERTIFICATE OF SERVICE**

I, the undersigned attorney for the Defendant herein, do hereby certify that the above and foregoing is being filed with the Clerk of this Court by electronic filing and will be served via e-mail by the Clerk of this Court to the following:

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Further, a copy has been delivered via First Class United States Mail, postage prepaid to:

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This the 29<sup>th</sup> day of October, 2008.

/s/ Cynthia A. Stewart

Cynthia A. Stewart