

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.	)	<b>MOTION OF UNITED STATES</b>
	)	<b>REQUESTING AN ORDER</b>
	)	<b>REQUIRING DEFENDANTS</b>
	)	<b>TO PRODUCE DOCUMENTS AND</b>
	)	<b>TANGIBLE OBJECTS PURSUANT</b>
	)	<b>TO THE STANDING DISCOVERY</b>
	)	<b>ORDER AND PURSUANT TO</b>
	)	<b><u>FED. R. CRIM. P. 16(b)(1)(A)</u></b>

COMES NOW the United States and files this motion requesting that the Court order the defendants Atlas Iron Processors, Inc., Anthony J. Giordano, Sr., Anthony J. Giordano, Jr., David Giordano, and Sunshine Metal Processing, Inc.<sup>1</sup> (hereinafter “defendants”) to produce all documents and tangible objects the defendants intend to introduce at trial.<sup>2</sup>

On December 2, 1997, the Court issued a Standing Discovery Order. On December 15, 1997, the United States filed its response to the Court’s Standing

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<sup>1</sup> Pursuant to Local Rule 88.9, the United States also contacted Ben Kuehne, counsel for defendant Randolph J. Weil. Kuehne has agreed to voluntarily provide the United States with this Rule 16 and Standing Discovery Order material no later than December 18, 1998.

<sup>2</sup> For the convenience of the Court, the United States has combined its motion and the supporting memorandum.

Discovery Order. In its response, the United States specifically requested that materials be produced to the United States pursuant to ¶B of the Standing Discovery Order and Fed. R. Crim. P. Rule 16. See, e.g., Response of United States To Standing Discovery Order Concerning Defendant Atlas Iron Processors, Inc., ¶B.<sup>3</sup>

Between December 19, 1997, and January 16, 1998, the Atlas defendants (Atlas Iron Processors, Inc., Anthony J. Giordano, Sr., Anthony J. Giordano, Jr., and David Giordano) filed separate responses to the Standing Discovery Order. In each response the Atlas defendants stated they had produced all the books, papers, documents, photographs or tangible objects they intended to produce as evidence in chief at trial. However, each Atlas defendant also reserved the right to supplement their response to the Standing Discovery Order once the United States had complied with the provisions set forth in the Standing Discovery Order.

The United States complied with the Standing Discovery Order's provisions nearly seven months ago, shortly after Magistrate Judge Dubé issued a sealed protective order on May 26, 1998. To date the United States has not received supplemental responses from any of the Atlas defendants.<sup>4</sup> For this reason, the United States respectfully requests that the Court order the defendants to fully comply with the requirements of the Standing Discovery Order, which provides:

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<sup>3</sup> Paragraph B provided:

The United States requests disclosure and production of materials enumerated as items 1, 2, and 3 of Section B of the Standing Discovery Order. This request is made pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure.

<sup>4</sup> To the best of the United States' knowledge, Sunshine has not filed a response to the Standing Discovery Order. Both Sunshine's Chapter 7 trustee and its criminal counsel, Marc Nurik, have represented to the United States that Sunshine will not defend at trial.

- B. The defendant(s) shall permit the government to inspect and copy the following items, or copies thereof, or supply copies thereof, which are within the possession, custody or control of the defendant(s), the existence of which is known or by the exercise of due diligence may become known to the defendant(s):
1. Books, papers, documents, photographs or tangible objects which the defendant(s) intend(s) to introduce as evidence in chief at trial.

Standing Discovery Order ¶B(1). The Standing Discovery mirrors the defendants' obligations under Fed. R. Crim. P. 16(b)(1)(A) which provides:

If the defendant requests the disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendants and which the defendant intends to introduce as evidence in chief at the trial.

Fed. R. Crim. P. 16(b)(1)(A) .

The trial is less than six weeks away. The United States complied with its discovery duties nearly seven months ago. Accordingly, the United States respectfully requests that the Court order the defendants to fully comply with the Standing Discovery Order and requirements of Rule 16(b)(1)(A) and produce all “books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendants and which the defendant intends to introduce as evidence in chief at the trial.” To avoid any further prejudice, the United States requests an Order requiring the defendants

to produce these materials forthwith, but no later than December 23, 1998. A proposed Order is attached.

Respectfully submitted,

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Acting Chief  
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By: 

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