

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA)	
)	CASE NO. 97-0853-CR-NESBITT
v.)	
)	
ATLAS IRON PROCESSORS, INC.;)	
SUNSHINE METAL PROCESSING,)	
INC.;)	
ANTHONY J. GIORDANO, SR.;)	RESPONSE OF UNITED STATES
ANTHONY J. GIORDANO, JR.;)	TO STANDING DISCOVERY ORDER
DAVID GIORDANO; and)	CONCERNING DEFENDANT
RANDOLPH J. WEIL,)	<u>ATLAS IRON PROCESSORS, INC.</u>
)	
Defendants.)	

The United States of America (hereinafter "United States"), by and through the undersigned counsel, files this response to the Standing Discovery Order issued in this case for the defendant Atlas Iron Processors, Inc. (hereinafter "Atlas"). This response is numbered to correspond to that order.¹[¹](###FOOTNOTE_1###)

¹ On December 11, 1997, the undersigned counsel called the Clerk of Court's office in the Southern District of Florida to find out if the Standing Discovery Order was entered in the above-captioned case since all of the defendants have not yet been arraigned, nor have all of the defendants in this matter retained counsel who have filed permanent appearances. The United States learned that the Standing Discovery Order was, in fact, issued on December 2, 1997.

- A. 1. The United States will produce, subject to any motion for a protective order pursuant to Rule 16(d) of the Federal Rules of Criminal Procedure, any written or recorded statements by Atlas. The United States believes that these statements are primarily in the form of certified statements or statements of counsel regarding compliance with grand jury subpoenas.
2. The United States will produce, subject to any motion for a protective order pursuant to Rule 16(d) of the Federal Rules of Criminal Procedure, that portion of any written record containing the substance of any relevant oral statement made by any person defined in Rule 16(a)(1)(A)(1) and (2) of the Federal Rules of Criminal Procedure in response to interrogation by any person then known- to-be a Government agent.
3. The United States will produce, subject to any motion for a protective order pursuant to Rule 16(d) of the Federal Rules of Criminal Procedure, the substance of any oral statement made by any person defined in Rule

16(a)(1)(A)(1) and (2) of the Federal Rules of Criminal Procedure in response to interrogation by a then known-to-be Government agent which the United States intends to offer in evidence at trial.

4. The United States will produce, subject to any motion for a protective order pursuant to Rule 16(d) of the Federal Rules of Criminal Procedure, the recorded grand jury testimony of any person defined in Rule 16(a)(1)(A)(1) and (2) of the Federal Rules of Criminal Procedure.
5. The United States has not found a criminal record of Atlas.
6. Books, papers, documents, etc., which the United States intends to use as evidence at trial to prove its case-in-chief, or which were obtained from or belong to Atlas, may be inspected and copied by making an appointment with the undersigned counsel. The United States has possession of these documents and materials at its Office in Cleveland, Ohio. Pursuant to a telephone conversation on December 12, 1997, with one of Atlas' counsel,

John McCaffery, it was agreed that all of Atlas' documents which are in the possession of the United States are immediately available for inspection and copying by Atlas. Absent a protective order being filed by Atlas, all documents produced by Atlas covered by Rule 16 will be made available to all defendants in the above-captioned criminal case.

7. There are no results or reports of physical or mental examinations, or of scientific tests or experiments, which are material to the preparation of the defense or are intended for use by the government as evidence in chief at trial.

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

C. The United States is in the process of determining what, if any, information or material exists which may be favorable to the defendant on the issues of guilt or punishment within the scope of Brady or Agurs. The United States will disclose to Atlas the substance of

this information and material, if any, or make available to Atlas for inspection and copying this information and material, if any, now known to be covered under Brady or Agurs. The United States understands its obligation under Brady and Agurs to be a continuing one.

- D. The United States is in the process of determining the existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective government witnesses, within the scope of Giglio and Napue. The United States will disclose to Atlas the substance of this information and material, if any, or make available to Atlas this information or material for inspection and copying, if any, now known to be covered under Giglio or Napue. The United States understands its obligation under Giglio and Napue to be a continuing one.
- E. The United States will supply Atlas with the record of prior convictions of any informant who will testify for the United States at trial.
- F. Atlas was not identified in a photo spread or similar identification proceeding.
- G. The United States has advised its agents and officers involved in this case to preserve rough notes.
- H. The United States will advise Atlas prior to trial of its

intent, if any, to introduce during its case-in-chief additional evidence pursuant to Federal Rule of Evidence 404(b). Please be advised, however, that the United States does intend to introduce against Atlas evidence that Atlas participated in collusive conduct in Cleveland, Ohio. Finally, Atlas is hereby on notice that all evidence made available to Atlas for inspection, as well as all statements disclosed herein or in any future discovery or discovery letter, may be introduced in the trial of this case.

- I. Atlas is not an aggrieved person, as defined in Title 18, United States Code, Section 2510(11), of any electronic surveillance.
- J. The United States has ordered transcribed the Grand Jury testimony of all witnesses who will testify for the United States at trial.
- K. There is no contraband seized in this case.
- L. There are no vehicles, vessels, etc., involved in this case.
- M. The United States is not aware of any latent fingerprints or palm prints which have been identified by a government expert as those of any person who satisfies the standard set forth in A.2 above.

- N. The United States intends to make every possible effort in good faith to stipulate to all facts or points of law the truth and existence of which is not contested and the early resolution of which will expedite the trial.
- O. Counsel for Atlas may contact the undersigned to arrange for a pretrial conference. Following the conference, the United States is prepared to collaborate on a written statement to the court setting forth the discovery exchanged and any stipulations reached.

The United States is aware of its continuing duty to disclose such newly discovered additional information required by the Standing Discovery Order, Rule 16 of the Federal Rules of Criminal Procedure, materials or information covered under Brady, Agurs, Giglio, and Napue, and the obligation to assure a fair trial.

In addition to the request made above by the United States pursuant to Section B of the Standing Discovery Order and Rule 16(b) of the Federal Rules of Criminal Procedure, and in accordance with Rule 12.1, 12.2 and 12.3 of the Federal Rules of Criminal Procedure, the United States demands Notice of Alibi, Insanity and Public Authority defenses; the approximate time, date, and place of the offense is set forth in the Indictment.

Respectfully submitted,

WILLIAM J. OBERDICK
Acting Chief
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CERTIFICATE OF SERVICE

I hereby certify that copies of the following:

- 1) RESPONSE OF UNITED STATES TO STANDING DISCOVERY ORDER CONCERNING DEFENDANT ATLAS IRON PROCESSORS, INC.;
- 2) RESPONSE OF UNITED STATES TO STANDING DISCOVERY ORDER CONCERNING DEFENDANT ANTHONY J. GIORDANO, SR.;
- 3) RESPONSE OF UNITED STATES TO STANDING DISCOVERY ORDER CONCERNING DEFENDANT ANTHONY J. GIORDANO, JR.;
- 4) RESPONSE OF UNITED STATES TO STANDING DISCOVERY ORDER CONCERNING DEFENDANT DAVID GIORDANO; AND
- 5) RESPONSE OF UNITED STATES TO STANDING DISCOVERY ORDER CONCERNING DEFENDANT RANDOLPH J. WEIL.

were sent Federal Express to the Office of the Clerk of Court on this 15th day of December, 1997. Copies of the above-captioned pleadings were also served upon the defendants via regular U.S. mail on this 15th day of December, 1997.

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