

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,
Plaintiff,

v.

DEFENDANT
Defendant.

CRIMINAL NO. 00-000

MOTION TO COMPEL PRODUCTION OF DISCOVERY

TO THE HONORABLE COURT:

COMES NOW, the Defendant and moves this Court for an Order directing the Government to provide the defendant with discovery, to wit: to allow the defendant through his attorney, to view the boat Moby Dick as promised by the United States during the last status conference in this case and required by the discovery rules governing this Court.

This motion is based on the memorandum of law attached hereto and hereby incorporated by reference.

JOSEPH C. LAWS, JR.
Federal Public Defender

Assistant Federal Public Defender
USDPR-
259 F.D. Roosevelt
San Juan, PR 00918-2305
Tel. 281-4922

MEMORANDUM OF LAW

FACTS

On March 14, 2001, a Status Conference was held in this case. During that conference the United States agreed to allow the defendants, through counsel, to see the vessel in which the alleged drugs were allegedly shipped. A number of requests have been made to the Assistant United States Attorney (AUSA) in charge of the case, by counsel, to allow the promised viewing of said ship. The fruition of said promised visit remains as illusory as Herman Melville's whale, in the novel which is undoubtedly the name sake of the boat in question in this case.

It is simply a fact that counsel needs to see the boat to determine if there are motions that need to be filed and to prepare for trial. Although counsel has requested several times for a date to see the vessel, only one date has been set, and that was cancelled unilaterally by the AUSA in charge of this case.

This Court has set May 10, 2001 as the last day to file motions herein; that date is rapidly approaching.

ARGUMENT

The information requested is necessary for counsel to evaluate this case, in fact counsel cannot determine what motions should be filed or other procedures should be followed, because of the lack of the discovery requested herein. The defendant is incarcerated and counsel would like to move this case forward, but he is stymied until discovery is provided.

Rule of Criminal Procedure 16 (C), allows the defendant to: “inspect . . . photograph . . . tangible objects . . . which are material to the preparation of the defendant’s case or are intended for use by the government as evidence in chief at the trial.” The same rule 16 allows the Court to fashion remedies for the violations of the discovery rules. Counsel requests that this Court set a definite date for the Government to meet its discovery obligation. If it is not met, then that the Court refuse to allow the government to use, during trial, any of the evidence which was alleged to be found in the said vessel.

The defendant further requests that any time the Court uses to decide this motion not be charged against him. This motion simply requests that discovery be provided to him, as is done routinely in other cases without the need to file motions, and as previously promised by the government in this case.

Defendant does not mean to imply any bad faith on the part of the government. Government attorneys are very busy with the large numbers of cases that they must resolve. However, the defendant needs to see the boat.

CERTIFICATION PURSUANT TO LOCAL RULE 408

Counsel certifies that he has asked the AUSA in charge of this case for a date to meet to view the vessel which is the subject matter as this motion and that no date has been provided by the government except as mentioned herein. The government has made no attempt, to counsel’s knowledge, to set another meeting with counsel.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 24th day of April 2001.

JOSEPH C. LAWS, JR.
Federal Public Defender

Assistant Federal Public Defender
USDPR-
259 F.D. Roosevelt
San Juan, PR 00918-2305
Tel. 281-4922

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the attached motion has been served upon the United States Attorney's Office by hand delivering a copy to said office this 24th day of April 2001.

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