

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-20999-CR-Lenard/Garber

UNITED STATES OF AMERICA,

v.

FRANKLIN DURAN,

Defendant.

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**OMNIBUS ORDER**

THIS CAUSE is before the Court by Order of Reference from U.S. District Judge Joan A. Lenard on the defendant Duran's (1) Motion to Compel Discovery Pursuant to Fed. R. Cr., P. Rule 16 [DE 242], and (2) Motion to Compel Discovery Pursuant to Fed. R. Rim. P. 16 [DE 246]. The Court has received the government's responses in opposition to each motion as well as the defendant's replies thereto.

**Motion Pursuant to Rule 16 [DE 242]**

By this Motion the defendant seeks discovery regarding any questioning of the defendant by agents of the United States Customs Service or United States Immigration Services and the statements made by the defendant to such agents, as well as the identification of such agents that interviewed the defendant. In addition, the defendant seeks any law enforcement report regarding a search of the defendant's Lear Jet aircraft on or about December 11, 2007.

Regarding the statements made by the defendant to government agents as referenced above, the government, in its response, advises that it has "provide[d] the

substance of statements made by defendant Duran to Customs and Border Patrol Officers during the relevant time period in the government's possession."

As to the search of the defendant's aircraft, the government advises in its response that "a search of the government's records confirms that a routine search of the aircraft occurred on December 8, 2007, and that the result of the search was negative."

The Court finds that the identities of the agents that took statements from the defendant are not discoverable since such statements are not subject to disclosure pursuant to Rule 16 and that the identities of the agents are also not subject to discovery. Accordingly, the Court finds that the government has provided discovery as mandated by Rule 16 and that the defendant's Motion must be denied.

#### **Motion Pursuant to Rule 16 [DE 246]**

The defendant Duran, by this Motion, seeks "discovery of e-mail and text messages sent by Duran, Carlos Kauffmann and Moises Maionica to Alejandro Antonini between August 4 and December 11, 2007 . . ."

The government's response states that it has provided the defense with the disclosure of written and recorded statements of the defendant Duran, setting forth and identifying specific disks, reports, and various text messages from and between the defendant and Alejandro Antonini. As to written or recorded statements of coconspirators and potential witnesses such as Kauffmann and Maionica, Rule 16(a)(1)(B)(I) is not applicable to such statements.

Alternatively, Duran claims that communications between Antonini, Kauffmann and Moises Maionica, pursuant to Fed. R. Crim. P. 16(a)(1)(E)(I), would be "material to preparing the defense." Although asserting such claim, the defense has not advised or

suggested how such production would be of assistance to the defense. *United States v. Jordan*, 316 F.3d 1250-51 (11<sup>th</sup> Cir. 2003). Accordingly, and upon due consideration, it is hereby

ORDERED that the defendant's Rule 16 Motion [DE 242] and Rule 16 Motion [DE 246] are DENIED.

DONE AND ORDERED in Chambers at Miami, Florida this 2<sup>nd</sup> day of September, 2008.

  
BARRY L. GARBER  
UNITED STATES MAGISTRATE JUDGE