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November 3, 2017

BY ECF

Honorable Richard M. Berman
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Courtroom 17B
New York, NY 10007-1312

Re: United States v. Reza Zarrab, et al, S4 15 Cr. 867 (RMB)

Dear Judge Berman:

The Court has ordered the parties to appear for an argument on the motion for relief from the protective order on November 6, 2017. We write to request a number of additional issues to be discussed at that time.

Both the Defense and the Government filed their motions *in limine* on October 30, 2017. As a result of those motions, we respectfully suggest the following items for discussion:

1) As the Court is aware, the defense may call witnesses who are located in Turkey. We intend to make another fact-finding trip soon after the Court rules on the Protective Order motion. We would also like to discuss a process for keeping the names, identifying information, and summary of testimony of defense witnesses under seal. We have concerns about witness privacy and witness intimidation before trial and, like the Government, would like witness information to be kept under seal until trial.

We believe it would be useful and expedient to discuss the mechanism for testimony, either through videoconference or via Rule 15 depositions in Turkey.

2) As part of our motions *in limine*, we have requested a pretrial hearing related to the recordings that the Government intends to offer. We think it would be prudent to discuss logistics and timing for such a hearing unless the Court grants our motion *in limine* to preclude the recordings on the papers.

3) We would like to get a schedule for production of *Jencks* materials and marked exhibits. We still do not know what evidence the Government intends to offer. Since we need to investigate facts in Turkey, we request early production of *Jencks* and prompt production of marked exhibits so that we can address fact finding, in response, on our next (and hopefully final) fact finding trip to Turkey. We are, of course, amenable to keeping the *Jencks* materials confidential. We understand that it is a different category of material than Rule 16 discovery.

4) We would like to discuss the Government's late disclosure, *ex parte*, to the Court on November 2, 2017 of Rule 16(d) materials which it contends are classified and should not be disclosed to the Defense.

5) Finally, we would like to discuss a realistic trial date. Mr. Atilla has consistently pushed hard for trial as quickly as possible but given that there have been late disclosures of discovery in this case, and other issues set forth below, it is just not possible to go forward on the current schedule. The Defense team has worked with diligence, but we are hampered by logistics as well as the severe limitations of trial preparation with Mr. Atilla being at the MCC. Given the amount of work that needs to be done – much of it in Turkey – and given that we still do not have marked exhibits or *Jencks* materials, coupled with the need for pretrial hearings and (perhaps) Rule 15 depositions, we do not believe we can realistically pick a jury on November 20-21 and start trial on November 27, 2017. It is with great reluctance that Mr. Atilla has consented to the Defense requesting a trial date in January 2018.

Respectfully submitted,

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cc: All Counsel