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December 4, 2017

Honorable Richard M. Berman, U.S.D.J.
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Courtroom 17B
New York, New York 10007

Re: U.S.A. v. Reza Zarrab, et al.
U.S. District Court for the Southern District of New York
S4 15-cr-00867 (RMB)

Dear Judge Berman:

The purpose of this letter is (1) to advise Your Honor of the Government's material and prejudicial breach of the Court's Monday, November 28 Order that it produce all *Brady* material no later than that evening, thereby further demonstrating its almost casual efforts to comply with its *Brady* obligation, and (2) to apprise the Court of an additional late Saturday night example of the "better late than never" attitude that continues to characterize the Government's production of trial exhibits and discovery.

A. *Brady*

First, the *Brady* violation. In the Court's November 28 Order ruling on the defendant's application for a two-week adjournment of the trial date, Your Honor directed the Government as follows:

Second, I am asking the government or directing that all *Brady* material, all *Brady* material for the trial be served by this evening, say 6 or 7 o'clock this evening. . . . And again, all *Brady* material to be produced today.

(Tr., November 28, 2017 at 8; see attached Ex. A).

The Government has failed to heed that direction. On Saturday, December 2, at 10:42 PM (see attached cover email, Ex. B), the Government produced five audio recordings, all in a foreign language, in which Reza Zarrab was a participant while incarcerated after his arrest in this case. Also produced is what appears to be a two-page English summary of these calls. (See

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attached Ex. C). In one of them, dated September 15, 2016, Zarbab explicitly discusses the perceived need, when incarcerated in the United States, to lie “in order to get out or to get a reduced sentence. . . .” Thus, the summary continues, “you need to admit to crimes you haven’t committed.” Shortly thereafter, Zarbab repeats himself: “. . . [I]n America in order to make it out of prison you need to admit to something you haven’t committed.”

The import of these statements for *Brady* purposes is patent on their face. Zarbab is proclaiming his willingness to fabricate testimony out of whole cloth in order to obtain a reduced sentence. The belated production of these statements not only violates this Court’s November 28 Order, but also significantly impairs the ability of the defense to properly and effectively utilize them at trial. “Due process requires the disclosure of exculpatory and impeachment evidence material to guilt or innocence be made in sufficient time to permit the defendant to make effective use of that information at trial.” *Weatherford v. Bursey*, 429 U.S. 545, 559 (1997). *See also, United States v. Gil*, 297 F.3d 93, 105 (2d. Cir. 2002) (*Brady* material -- a memorandum by a witness supporting the defendant’s defense -- buried in a box of 3500 material turned over the weekend before trial, did not constitute timely production); *United States v. Coppa*, 267 F.3d 132, 142 (2d Cir. 2001). Failure to make such disclosure “violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

At this late date, the defense, without additional time, cannot effectively pursue the summary’s additional reference to “Bahram’s friends” who met with Zarbab’s lawyer and said “that they hated him and wished him to get sentenced for 30 years.” We need first to determine who these people are and then investigate further. “Bahram’s friends” would be an excellent source for possible additional items adversely impacting Zarbab’s credibility. The Government’s violation of this Court’s November 28 Order has prejudiced Mr. Atilla’s right to investigate facts highly material to his defense.

Furthermore, we have preliminarily determined that at least some of the belatedly-delivered phone calls in the five audio files are in Azeri, not Turkish. The translations received from the Government are summaries only. Our translators can understand some Azeri, but are not able to do full translations from that language. Thus, we cannot at this time immediately review all the audio files provided last night.

B. Belated Discovery Production

As another part of the Government’s Saturday production, but at 11:57 PM (see Ex. B), the defense received a folder entitled “Additional & Revised Draft GX.” Included therein were very large files, seemingly containing pictures of invoices and a large number of Excel spreadsheets and other materials. There are 749 files in the folder labeled “608” and at least 971 files in the folder labeled “609.” One of these files may contain the entire contents of the email account for “sururi@royaltk.com.pst.”

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We are now reviewing this massive production. But the belated production, in itself, constitutes still another heavy burden on the defense to analyze and react to the Government's ongoing delivery of large quantities of materials during the trial.

We are anxious to bring this serious lapse to the Court's attention as quickly as possible in the hope that the Court will use this violation of its mandate to halt further violations of Mr. Attila's rights.

We also respectfully reserve our right to seek an appropriate remedy once we have completed our review of the production.

Respectfully submitted,

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Attorneys for Defendant Mehmet Hakan Atilla

Attachments
cc: All Counsel

EXHIBIT A

HBS3ATII

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

S4 15 Cr. 867 RMB

5 MEHMET HAKAN ATILLA,

6 Defendant.

7 -----x

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November 28, 2017
8:45 a.m.

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12 Before:

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HON. RICHARD M. BERMAN,

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District Judge
and a jury

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APPEARANCES

18

JOON H. KIM,
United States Attorney for the
Southern District of New York
MICHAEL DENNIS LOCKARD,
SIDHARDHA KAMARAJU,
DAVID WILLIAM DENTON, JR.,
DEAN CONSTANTINE SOVOLOS,
Assistant United States Attorneys

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2 (APPEARANCES Continued)

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4

HERRICK, FEINSTEIN LLP (NYC)
5 Attorneys for defendant Atilla
BY: VICTOR J. ROCCO, Esq.
6 THOMAS ELLIOTT THORNHILL, Esq.
- and -

7 FLEMING RUVOLDT, PLLC
BY: CATHY ANN FLEMING, Esq.
8 ROBERT J. FETTWEIS, Esq.
- and -

9 LAW OFFICES OF JOSHUA L. DRATEL, P.C.
BY: JOSHUA LEWIS DRATEL, Esq.
10 Of counsel

11

12 Also Present:

13 JENNIFER McREYNOLDS, Special Agent FBI
MICHAEL CHANG-FRIEDEN, Paralegal Specialist USAO
14 MS. ASIYE KAY, Turkish Interpreter
MS. SEYHAN SIRTALAN, Turkish Interpreter

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HBS3ATII1

1 for you in a couple of minutes. Just to give you some
2 highlights.

3 First of all, I'm not adjourning the trial date, and
4 I'll explain why in detail in a couple of minutes.

5 Second, I am asking the government or directing that
6 all Brady material, all Brady material for the trial be served
7 by this evening, say 6 or 7 o'clock this evening. And I'm
8 going to give you an accelerated advanced look at what's
9 upcoming. So, for example, by I think I say 6 in the order
10 this evening, 6 or 7, I want you to advise the defense of all
11 the witnesses for this week, and all exhibits for this week,
12 and then going forward on Fridays of each week, including this
13 week, to give them an advanced look for the week after. So
14 there should be no surprise as to exhibits that are going to be
15 introduced or witnesses that are going to be called and
16 presented and who they are. And again, all Brady material to
17 be produced today.

18 So, thanks. I'll call you back in a minute, we're
19 typing up an order.

20 MS. FLEMING: May I excuse myself for a few minutes to
21 step outside?

22 THE COURT: Sure.

23 (Pause)

24 (Defendant present)

25 MR. KAMARAJU: Would your Honor like us to ask for

EXHIBIT B

Robert Fettweis

From: Chang-Frieden, Michael (USANYS) (Contractor) <Michael.Chang-Frieden@usdoj.gov>
Sent: Saturday, December 2, 2017 11:57 PM
To: Thornhill, Thomas; Cathy Fleming; Rocco, Victor; Jonathan Stern; Rosenfield, David; Robert Fettweis; Harrison, Todd; Evans, Joseph; jdratel@joshuadratel.com
Cc: Lockard, Michael (USANYS); Kamaraju, Sidhardha (USANYS); Denton, David (USANYS); Sovolos, Dean (USANYS)
Subject: RE: U.S. v. Mehmet Hakan Atilla - Additional 3500 Materials

Counsel –

Please also find on USAfx a folder titled, "2017.12.02 Additional & Revised Draft GX," which is being produced under seal.

Best,
Michael

From: Chang-Frieden, Michael (USANYS) (Contractor)
Sent: Saturday, December 2, 2017 10:42 PM
To: 'Thornhill, Thomas' <tthornhill@herrick.com>; 'Cathy A. Fleming Esq.' <cleming@flemingruvoldt.com>; 'Rocco, Victor' <vrocco@herrick.com>; 'jstern@flemingruvoldt.com' <jstern@flemingruvoldt.com>; 'Rosenfield, David' <drosenfield@herrick.com>; 'rfettweis@flemingruvoldt.com' <rfettweis@flemingruvoldt.com>; 'Harrison, Todd' <Tdharrison@mwe.com>; 'Evans, Joseph' <jbevans@mwe.com>; 'jdratel@joshuadratel.com' <jdratel@joshuadratel.com>
Cc: Lockard, Michael (USANYS) <MLockard@usa.doj.gov>; Sidhardha .Kamaraju (Sidhardha.Kamaraju@usdoj.gov) <Sidhardha.Kamaraju@usdoj.gov>; Denton, David (USANYS) <DDenton@usa.doj.gov>; Sovolos, Dean (USANYS) <DSovolos@usa.doj.gov>
Subject: U.S. v. Mehmet Hakan Atilla - Additional 3500 Materials

Counsel –

Please find on USAfx a folder titled, "2017.12.02 Additional 3500 Materials," which are subject to the 11/15/2017 protective order in this case.

Best,

Michael Chang-Frieden
Paralegal Specialist
United States Attorney's Office
Southern District of New York, Criminal Division
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New York, NY 10007
Tel.: 212.637.2544
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EXHIBIT C

RESTRICTED: DO NOT DISSEMINATE

10/21/2016 14:04:38

Reza talks to a male, ambassador will do his best, they all do their best, Reza asks if the ambassador has returned to US, ambassador will talk to officials here, Embassy will have only one hour, Mostafa may not go there.

10/21/2016 10:24:51

Tomorrow is the last day, ambassador will return on Monday, they should tell him to take me with him, he must say I came here to take him with me.

10/20/2016 14:54:44

Talks to mother, father and Samad, the 28th hearing day, 6 people will be exchanged for 4 people. They held a session, my lawyer present. Don't worry they will release/exchange you too. 8 months in prison, put more pressure there. Be brave Reza. Murderers get 15 years here.

File: 09135104_Sep_15_2016_20_46_39_PM_011905370404016 - Azeri

Reza talking to Ahad about injuries around his lips. Complaining about being stuck inside four walls. Arguing about sentencing [difference between 10 and 20 years]. Reza says in such a country, in order to get out or get a reduced sentence, you need to admit to crimes you haven't committed. Reza mentioned a representative from Bahram's friends' side meeting with one of his lawyers. They allegedly told the lawyer to fuck off [meaning Reza] and that they hated him and wished for him to get sentenced for 30 years. He once again mentions that in America in order to make it out of prison you need to admit to something you haven't committed.

Reza: "Ahad, there were 82 files, got each of them translated. Even found a lawyer specializing in these types of cases. But it doesn't work once you've admitted to something. They have two shops over there. Do they want to give them?"

Ahad: "Yes, they do and that's what I am trying to tell you all this time."

Reza: "Ahad, I know they want to. They want to give those two shops."

Ahad: "You are wrong, I realized you were wrong when I went to talk to them. You need to be patient, I will take care of it in couple of days."

RESTRICTED: DO NOT DISSEMINATE

They are talking about negotiating commissions. Reza wants to agree to whatever they offer. Ahad has only been there for two days to negotiate and Reza asks how long the whole process might take.

Conversation is cut off when Reza mentions Bahram.

5. Audio file name: 09135104_Nov_04_2016_17_20_44_PM_3156360542

Audio file length (MM:SS): 6:40

Number of speakers: 2

Summary:

Conversation between Zarbab and male speaker. Male speaker informs Zarbab that the meeting went well and was the most serious thing that they did so far. Male speaker spoke with Ms Sheyda, a lawyer, while allowing Ibrahim to listen to the conversation.

Zarbab asks if it was useful, whether males speaker called the person he was going to call.

Male speaker states that counsel was made aware.

Male speaker says they will talk to Mevlut and Bekir, that they lawyer Sheyda already spoke to them, and they will say what they were told to say, that she will talk to Beyefendi(Mister) and will offer him to call Obama if necessary. She is in contact with advisor to the assistant to president.

The advisor said that this is not only Reza's issue, but a national issue. That tomorrow she will talk to Bekir and inform Beyefendi (Mister) as well.

Male speaker assures Zarbab Ibrahim will be involved and that Mevlut, Bekir and Beyefendi (Mister) will call the president.