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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, Zarrab 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, Zarrab 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. Zarrab 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 Zarrab’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 Zarrab’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@royal.tk.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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Attachments

cc: All Counsel