U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

November 27, 2017

BY EMAIL AND BY ECF

Honorable Richard M. Berman
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Room 1650
New York, New York 10007

Re: United States v. Mehmet Hakan Atilla,
S4 15 Cr. 867 (RMB)

Dear Judge Berman:

The Government respectfully submits this letter in response to the defense counsel's letter earlier today today requesting an adjournment of the trial for two weeks. In their letter, counsel contends that late *Brady* disclosure (Ltr. at 2-3), "massive last-minute document productions" (*id.* at 3-4), late disclosure of trial exhibits (*id.* at 5), late production of 3500 material (*id*. at 5-6), and improper redactions from 3500 material (*id.* at 6-7), warrant an adjournment.

Defense's letter is the height of gamesmanship. First, as a matter of timing, the letter complains about issues that could—and should—have been raised far sooner than the day of jury selection. Second, as a matter of substance, it is a wholly inaccurate account of the status of disclosure in this case. This effort to mislead the Court into a last-second adjournment of the trial should be rejected.

The Government has produced a substantial volume of discovery in this matter, beginning moths ago after the defendant's arrest. The discovery includes records of financial transactions through U.S. bank accounts, emails obtained from search warrants, audio recordings of intercepted telephone calls and transcripts of intercepted telephone calls, the results of searches of telephones and electronic devices, and other materials. That discovery already had been produced when the trial date in this matter was selected. (*See* Tr. of Sept. 25, 2017 conference). Indeed, the November 27 trial date was requested by the defense. (*Id.* at 2-3).

What defense counsel complains about as "massive last minute document productions" is not, in fact, the production of new documents. It is the identification of anticipated trial exhibits from previously produced discovery. And that process began well in advance of trial – the vast majority of anticipated Government's exhibits were identified on November 6, 2017 – three weeks ago. That list has been periodically updated and revised as trial preparation continues,

but it is disingenuous to complain that these efforts have impaired, rather than assisted, trial preparation.

Moreover, the length of the exhibit list is in part the result of defense counsel's trial strategy. For example, the exhibit list includes both exhibits that the Government intends to offer as well as exhibits marked solely for identification. Among these are large collections of documentary exhibits—specifically bank records and email records—as to which defense counsel has refused to enter into a custodial stipulation.[1] Because the bank records and emails will have to be authenticated by live witness testimony, the entire bulk of records produced by these custodians are marked as exhibits for identification. From these bulk records, the Government will offer the particular, relevant records. These bulk records include the 600,000-row excel spreadsheet of bank records about which the defense counsel complains on page 5 of their letter.

Complaints about the production of 3500 are similarly misplaced. The Government is not required to produce material pursuant to 18 U.S.C. § 3500 prior to trial. 18 U.S.C. § 3500(a). Nonetheless, in order to assist defense trial preparation, the Government was prepared to produce 3500 material by November 13, 2017, two weeks in advance of trial. We asked only that the defense enter into certain reasonable stipulations (like custodial stipulations) and a protective order in order to facilitate our ability to focus resources on providing the materials. Defense counsel would not stipulate to the requested protective order, requiring the Government to apply for an order on November 14, 2017. Although counsel declined to stipulate to the order, they then declined to oppose it, and the order was entered on November 15. The bulk of the 3500 material was produced on November 16. Additional 3500 material has periodically been produced as it has become available for production, including redaction pursuant to the protective order.

Importantly, defense counsel was well aware of most of the matters complained of in their letter from earlier today by November 6, when the bulk of proposed trial exhibits were identified, and November 16, when the bulk of the 3500 material was produced. Yet they inexplicably delayed until the day of trial to raise these issues with the Court.

The defense letter also argues that *Brady* material has been withheld, citing (but not quoting) certain Congressional testimony by former Undersecretary of the Treasury for Terror Finance and Intelligence David Cohen. (Ltr. at 1, 2-3). First, the cited material is not Brady and is mischaracterized in defense counsel's letter. The letter claims that then-Undersecretary Cohen testified that the Treasury Department conducted "its own investigation" into the export of gold from Turkey to Iran and, based on that investigation, "had determined that Turkey had in fact not used gold to finance the purchase of gas from Iran" and that "in large part, any gold sales from Turkey to Iran . . . involved sales to private citizens . . . and not transactions with the Iranian government." (*Id.*). To the contrary, the testimony reflects a position already disclosed in the 3500 material relating to Mr. Cohen that the Government has previously disclosed: not that the Treasury Department "investigated" and "determined" facts relating to this matter, but that "what

[1] The Government has proposed bare-bones custodial stipulations for banks and email custodians that would establish the authenticity of records produced by those custodians, but which would not require the defense to stipulate to the relevance admissibility of any particular records. The defense has so far refused to enter into such stipulations, even in principle.

we [the Treasury Department] see" are purchases of gold by Iranian citizens and "we do not see" Turkey sending gold to Iran for natural gas. The produced 3500 material reflects that Treasury was suspicious of the nature of gold exports from Turkey to Iran financed by Halk Bank, but lacked direct proof contradicting Halk Bank's account that the gold was for private gold and jewelry buyers.

More importantly, (a) the Government was not previously aware of the testimony identified by defense counsel, (b) it was not in the Government's possession for *Brady* purposes, and (c) publicly available statements are not required disclosures under *Brady* in any event. See, e.g., United States v. Payne, 63 F.3d 1200, 1208 (2d Cir. 1995) ("Documents that are part of public records are not deemed suppressed if defense counsel should know of them and fails to obtain them because of lack of diligence in his own investigation.").

Lastly, the redactions from the 3500 material that the defense complains of in there letter were never previously identified to the Government. Nonetheless, those redactions are appropriate. The purpose of 3500 material is for the cross-examination of witnesses, not for investigative use by the defense. Moreover, the Government will provide the Court with an unredacted version of the 3500 material as discussed today in court.

For the foregoing reasons, the adjournment request should be denied.

Respectfully submitted,

JOON H. KIM
Acting United States Attorney for the
Southern District of New York

By: /s/
Michael D. Lockard
Sidhardha Kamaraju
David W. Denton, Jr.
Assistant United States Attorneys
Dean C. Sovolos
Special Assistant United States Attorney
(212) 637-2193/6523/2744/2213

cc: All Counsel (by ECF)