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April 1, 2020

By Electronic Mail

Michael Krouse  
Jane Kim  
Stephanie Lake  
Assistant United States Attorneys  
Garrett Lynch  
Special Assistant United States Attorney  
U.S. Attorney's Office for the  
Southern District of New York  
1 St. Andrew's Plaza  
New York, NY 10007

Re: *United States v. Ali Sadr Hashemi Nejad*, Case No. 18-cr-224 (AJN)

Dear Counsel:

We are writing in response to the letters you sent yesterday to us and the Court, respectively, responding to our March 24, 2020 request for undisclosed *Brady* and other materials. *See* Exhibit A (Letter from Brian Heberlig to Michael Krouse, et al., Mar. 24, 2020). In our March 24 Letter, we requested, among other things, a copy of the recording of the government's January 22, 2020 interview of unindicted co-conspirator Bahram Karimi (the "Recording").

As you are aware, we first made a *Brady* demand for the Recording on February 3, 2020, shortly after the government charged Mr. Karimi with a false statements offense based on alleged statements during the January 22, 2020 interview that were flatly inconsistent with the government's allegation in this case that Mr. Karimi conspired with Mr. Sadr to violate the Iran sanctions. *See* Exhibit B (Letter from Brian Heberlig to Michael Krouse, et al., Feb. 3, 2020). The government agreed to produce the Recording, but claimed that it was in the possession of the Canadian authorities who participated in the January 22 interview, which took place in Vancouver, British Columbia. On February 23, 2020, after we renewed our *Brady* demand for

U.S. Attorney's Office  
for the Southern District of New York  
April 1, 2020  
Page 2

the Recording, you assured us that the FBI had requested the recording from the Canadian authorities but had not yet received it, and you agreed to promptly produce the Recording when it was received. *See Exhibit C* (Email exchange between Brian Heberlig and Michael Krouse, et al., dated Feb. 23, 2020). During the charge conference on March 10, 2020, the government likewise assured the Court that it had requested the Recording but did not yet possess it, and highlighted the purported efforts it had made to obtain and provide the recording to the defense. Trial Transcript at 1357-60.

Yesterday, the government produced the Recording to the defense for the first time, weeks after the conclusion of the trial. In its letters to the defense and the Court, the government revealed that contrary to its multiple prior representations, the FBI received a copy of the Recording on February 4, 2020—*the day after the defense requested it*—and the FBI case agents on the prosecution team received it shortly thereafter.

Your letters raise several important questions about the government's failure to produce the Recording before trial. We request that you promptly provide a full explanation of the circumstances behind the government's multiple untrue statements to the defense and to the Court, including answers to the following questions:

- Who made the request to the Canadian government to produce the Recording and what was the Canadian government's response?
- When did the AUSAs assigned to this matter learn that the Canadian government had agreed to produce the Recording?
- In yesterday's letter to us, you state that prior to the February 5, 2020 production of interview notes and reports related to Karimi, the FBI case agents informed the AUSAs by email that they had not yet received the Recording from the Canadian government. Had the Canadian government already agreed to send the Recording prior to February 5? If so, why did the government not inform defense counsel?
- In yesterday's letter to us and the Court, you state that on February 18, 2020, one of the AUSAs asked the case agents by email whether they had received the Recording (the "February 18 email"). What prompted the AUSA to send this email on February 18? When did the AUSAs expect that the FBI would be receiving the Recording? Which of the FBI case agents and AUSAs were copied on the February 18 email exchange?
- In yesterday's letters to us and the Court, you state that in response to the February 18 email one of the FBI case agents "mistakenly" responded that the Recording was "in transit."
  - Was this the only response to the February 18 email?

U.S. Attorney's Office  
for the Southern District of New York  
April 1, 2020  
Page 3

- Was the FBI case agent who sent the erroneous response to the February 18 email also one of the FBI case agents who you state received a copy of the Recording on February 12?
- Were other FBI case agents included on the erroneous response to the February 18 email?
- If so, why did no one correct the mistake? If not, why did the other FBI case agents never inform the AUSAs that they had received the recording?
- In its response to our February 23, 2020 follow-up request for the Recording, the government stated that “[t]he FBI has requested the recordings from Canada’s RCMP, but we have not yet received them.” At the time, it knew, at a minimum, that the Canadian authorities had already sent the Recording, which the AUSAs purportedly believed was “in transit” as of February 18.
  - What sort of “transit” process did the government believe would take more than five days for the Recording to reach New York from Canada?
  - What did the AUSAs do thereafter to determine why they had not received the Recording after being told on February 18 that it was “in transit?”
  - Why did the government not notify defense counsel in its February 23 email that the Recording was “in transit” as of February 18?
- Why did the AUSA(s) who knew that the recording was “in transit” as of February 18 wait until March 30 to ask the FBI case agents whether the Recording had finally arrived?
- Regardless of the February 18 email and response, what did the FBI case agents do with the Recording after it was received?

The government’s letters from yesterday also raise troubling questions about the Recording and representations the government made to the Court and the defense during trial. We request that you promptly answer the following questions and provide any other relevant information:

- On March 8, 2020, the government wrote to the Court that it was “working to confirm that there is nothing else related to the Bank-1 investigation that has any bearing in this case, *and that there have been no other omissions from the materials produced to the defense*, both at the U.S. Attorney’s Office and DANY.” Dkt. No. 275, at 3 (emphasis

U.S. Attorney's Office  
for the Southern District of New York  
April 1, 2020  
Page 4

added). Prior to this representation, what inquiries were made about the outstanding request for the Recording and what responses were received?

- On March 10, 2020, the government told the Court that “we have made efforts after we produced those notes, after we met with Mr. Karimi in Canada, the FBI agents who participated reached out to RCMP and asked for all of the recordings and whatever other materials they may have had from prior interviews of Mr. Karimi,” and that “the squad supervisor again reached out and asked again for the recordings.” Trial Tr. 1359-60 (charge conference, March 10, 2020). At that time, according to your letters of yesterday, the AUSAs believed the Recording had been “in transit” since at least February 18, while the FBI case agents knew they had received a copy of it a month earlier, on February 12, 2020. Dkt. No. 303, at 1.
  - Why did the AUSAs fail to mention that they were told that the Recording had been “in transit” for weeks?
  - If the AUSAs were notified that the Recording was already “in transit” as of February 18, why would the squad supervisor “again reach[] out and ask[] again for the recordings”?
  - What was the response to the squad supervisor’s inquiry?
  - Were the FBI case agents who had possessed the Recording since February 12, 2020 present in Court during the charge conference when the above statements were made? If so, why did they not correct the AUSA’s statements to the Court?

In addition to answering the above outstanding questions related to the government’s failure to produce the Recording prior to trial, we request that you produce immediately all communications related to the Recording, including but not limited to the following:

- All communications between the government (including AUSAs, FBI case agents, and the FBI Legal Attaché in Canada) and the Canadian government related to any and all recordings or other materials Canadian authorities possess from any and all interviews of Mr. Karimi;
- All communications between the AUSAs, FBI case agents, and the FBI Legal Attaché related to any and all recordings or other materials Canadian authorities possess from any and all interviews of Mr. Karimi; and
- All communications between the AUSAs and FBI case agents related to any and all recordings or other materials Canadian authorities possess from any and all interviews of Mr. Karimi.

U.S. Attorney's Office  
for the Southern District of New York  
April 1, 2020  
Page 5

Please advise us immediately if you object to any of the above requests so that we may address them with the Court.

Sincerely,

/s/ Brian M. Heberlig

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**Exhibit A**  
*to April 1, 2020 Letter*

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March 24, 2020

By Electronic Mail

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Jane Kim  
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Assistant United States Attorneys  
Garrett Lynch  
Special Assistant United States Attorney  
U.S. Attorney's Office for the  
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1 St. Andrew's Plaza  
New York, NY 10007

Re: *United States v. Ali Sadr Hashemi Nejad*, Case No. 18-cr-224 (AJN)

Dear Counsel:

On multiple occasions beginning in 2018, we requested “immediate identification and disclosure of all documents and information (in whatever form) that are favorable to the defense or that would tend to exculpate Sadr or mitigate his culpability with respect to the charges in the indictment, that would tend to impeach any potential witness against Sadr, or that are relevant to the issue of sentencing.” Dkt. No. 92-1 at 5 (noting that it incorporated previous requests). This included *Brady* information, *Giglio* information, and, among other enumerated categories:

- “Any document or information indicating or tending to establish that any other person (including but not limited to the alleged co-conspirators) believed that any meeting, conversation, use of words, practice, or conduct that is the subject of the indictment or forms the basis of the indictment did not constitute a crime.” *Id.* (¶ IV.4).
- “Any documents or information indicating or tending to establish that the alleged false or fraudulent pretenses were not material.” *Id.* (¶ IV.7).

U.S. Attorney's Office  
for the Southern District of New York  
March 24, 2020  
Page 2

- “Any documents or information indicating or tending to establish that a third person was responsible for the financial transactions at issue in any count of the indictment.” *Id.* (¶ IV.8).

“All of these requests are continuing in nature, requiring supplementation in accordance with Fed. R. Crim. P. 16(c).” *Id.* at 2 n.2.

During the past two months, the government has demonstrated that its discovery disclosures were inadequate and that it has failed to “promptly disclose” any additional evidence that it discovered as required by Fed. R. Crim. P. 16(c). We therefore write to reiterate our request for the immediate identification and disclosure of all documents and information (in whatever form) that are favorable to the defense or that would tend to exculpate Sadr or mitigate his culpability with respect to the charges in the indictment, that would tend to impeach any potential witness against Sadr, or that are relevant to the issue of sentencing. This includes documents and information in the possession, custody or control of DANY (which originated and continues to participate in this prosecution) as well as the United States Attorney’s Office.

We note the following six examples, but these are merely illustrations. The government is obligated to disclose evidence that tends to exculpate Sadr, mitigate Sadr’s culpability, impeach witnesses against Sadr, or bear relevance to sentencing. The government cannot rely on trial blinders to avoid its obligation to disclose all documents and information that may fall within any of these categories.

**EXAMPLE I – Further Information and Documentation from Citibank, Commerzbank, or Other Banks Regarding Bank Awareness**

On March 5 and March 6, 2020, the government disclosed evidence obtained in response to a March 2, 2020 request that in early 2013, Citibank cleared an \$87,141.67 transaction despite reason to believe it involved a housing project involving both Stratus Turkey and Iranian International Housing Co. Government witness Robert Peri claimed that he was not asked to conduct an investigation (Tr. 925)—though he later admitted directing his staff to look for information (Tr. 928)—and that he did not know when Citi had provided this exculpatory information to the government (Tr. 927). Peri claimed that he was unaware of “any further investigation Citi conducted” other than that in exhibits GX 429, GX 430, GX 431, and GX 432. Tr. 936.<sup>1</sup>

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<sup>1</sup> He further specifically claimed that he was unaware of any research into Iranian International Housing Company or the Venezuela housing project. Tr. 931-32.

U.S. Attorney's Office  
for the Southern District of New York  
March 24, 2020  
Page 3

On March 6, 2020, Ms. Lake stated that "There are also more documents that go with the bank fraud that will be coming in on Monday." Tr. 966. The following afternoon around 4:00 p.m., the government produced GX 411, a document confirming that both Commerzbank and OFAC were aware of the links between Stratus Turkey and Stratus Iran, aware that they were working on the Venezuela housing project, and aware of their ties to EN Bank since the very first payment, and both Commerzbank and OFAC determined that the matter did not merit further investigation or any kind of enforcement.

Please produce all information or documentation showing that Citibank, Commerzbank, or any other bank conducted any investigations, research, or clarification related to any of Sadr's entities, the Iranian International Housing Co., or the New Ojeda project. Similarly, please produce all information or documentation tending to show or suggest that Peri may have been untruthful, misleading, or guarded in any part of his testimony. This information and documentation would be favorable to the defense and would tend to exculpate Sadr or mitigate his culpability with respect to the charges in the indictment, would tend to impeach any potential witness against Sadr, or be relevant to the issue of sentencing.

**EXAMPLE II – Further Information and Documentation Regarding OFAC's Awareness and Decision Not to Pursue Enforcement**

On March 9, 2020, three days after disclosing OFAC's 2011 awareness, the government disclosed that it had approached OFAC in August 2016, and, among other things, offered to provide information to help OFAC initiate an enforcement action in connection with the factual allegations in this case "if so desired." Dkt. No. 283-1. The government further provided a detailed summary of its allegations. OFAC declined to initiate an enforcement proceeding against Sadr, any of the related companies, or any bank.

The government claimed that it had asked all members of the prosecution team for any evidence of communications with OFAC, and had uncovered only the handful of emails from SAUSA Lynch that it produced during trial. The government conducted this "investigation" in a span of only a few hours during the court proceedings.

Please produce any information or documentation tending to show that OFAC was aware of allegations related to those in this case and any information or documentation of OFAC's decision not to pursue enforcement or other action in response. These documents and information (in whatever form) are favorable to the defense and would tend to exculpate Sadr or mitigate his culpability with respect to the charges in the indictment, would tend to impeach any potential witness against Sadr, or are relevant to the issue of sentencing.

This request specifically encompasses any information or documentation in the possession of DANY and/or OFAC. DANY initiated this investigation and prosecution, has cooperated with it every step of the way, and has a member of its office on the prosecution team.

U.S. Attorney's Office  
for the Southern District of New York  
March 24, 2020  
Page 4

This case has already seen meaningfully exculpatory evidence (GX 411) suppressed—whether intentionally or unintentionally—in connection with an apparent failure to fully search and make disclosures from DANY's files as well as the USAO's. The government has a responsibility to review DANY's files as well as the USAO's and to disclose any information or documentation favorable to the defense in this case.

Although the government has maintained that OFAC is not an arm of the prosecution in this case and therefore not within the scope of the government's *Brady* or discovery obligations, the government did prepare and put on an OFAC witness whose testimony created the impression, consistent with the government's trial theme, that OFAC would view the concealment of Iranian connections such as those alleged in this case as a very serious matter that would likely trigger OFAC investigation and enforcement proceedings, and would interfere with OFAC's administration and enforcement of the sanctions laws. In contrast to that witness's testimony, it turned out, after the mid-trial disclosures, that OFAC had been fully informed of the factual allegations and the government's prosecutorial theory in this case, and had done nothing. In light of these specifically contrasting facts revealed in this specific case, the government has a responsibility to search OFAC's files as well for any additional information regarding OFAC's knowledge and decision making in this specific case, and to disclose any such information or documentation in OFAC's possession, custody or control that is material to the defense or exculpatory. *See, e.g., Kyles v. Whitley*, 514 U.S. 419, 436-38 (1995) (prosecution has duty to learn of and disclose exculpatory evidence known to others acting on the government's behalf); *United States v. Bagley*, 473 U.S. 667, 676 (1985) (government must disclose evidence bearing on credibility of government witnesses); *Carriger v. Stewart*, 132 F.3d 463, 480 (9th Cir. 1997) (en banc) ("Because the prosecution is in a unique position to obtain information known to other agents of the government, it may not be excused from disclosing what it does not know but could have learned.").

### **EXAMPLE III – OFAC Witness Preparation**

Since trial, it has come to our attention that one of the three OFAC officers who discussed the case with the government in August 2016—Kaveh Miremadi—also attended Ted Kim's February 3, 2020 preparation session. Did anyone disclose at that meeting or at any other time to Ted Kim whether OFAC had ever investigated any of the conduct at issue in this case? This preparation session took place less than two weeks after SAUSA Lynch sent the Commerzbank document to the other government attorneys. Did anyone disclose at that meeting or at any other time to Ted Kim whether OFAC had ever investigated any of the conduct at issue in this case? This information is favorable to the defense and would tend to exculpate Sadr or mitigate his culpability with respect to the charges in the indictment, would tend to impeach any potential witness against Sadr, and is relevant to the issue of sentencing.

U.S. Attorney's Office  
for the Southern District of New York  
March 24, 2020  
Page 5

#### **EXAMPLE IV – Undisclosed Witness Statements or Interview Notes**

The government has only disclosed witness statements of witnesses who either testified or were listed on either party's witness list. The government has not disclosed any grand jury testimony of any person or any interview notes from discussions with any person who was not named as an anticipated or actual witness at trial. Based on the Fuenmayor 3500 material, the recently disclosed history of discussions with OFAC, and the government's presentation at trial, it appears that the government has been investigating this case since approximately 2013. Given what we have recently learned about the breadth of the government's investigation, statements in 3500 material, and public statements,<sup>2</sup> it seems likely that the government possesses other witness statements or interview notes containing documents and information (in whatever form) that are favorable to the defense or that would tend to exculpate Sadr or mitigate his culpability with respect to the charges in the indictment, that would tend to impeach any potential witness against Sadr, or that are relevant to the issue of sentencing. Please produce all such information and documentation.

#### **EXAMPLE V – The Karimi Recording**

On February 3, 2020, we wrote to reiterate these requests in light of the government's failure to disclose to the defense that Bahram Karimi allegedly told "among other people, two FBI agents" that he "he didn't know [the payments charged in the Indictment in this case] w[ere] prohibited by the sanctions." Statement of U.S. Attorney Geoffrey Berman, <https://www.justice.gov/usao-sdny/pr/iranian-national-charged-bank-fraud-and-lying-federal-agents-connection-scheme-use-us>. This information was encompassed by Sadr's 2018 request. Sadr therefore reiterated his continuing request for "immediate identification and disclosure of all *Brady* information, *Giglio* information, and other evidence that is favorable to the defense or that would tend to exculpate Sadr or mitigate his culpability with respect to the charges in the indictment, that would tend to impeach any potential witness against Sadr, or that are relevant to the issue of sentencing." Letter from Brian Heberlig et. al to Michael Krouse et. al (Feb. 3, 2020). He further requested all recordings, memoranda, and notes from the Karimi meeting including "all recordings, memoranda, and notes taken by any Canadian law enforcement officials who were present." *Id.* The government has admitted that the Karimi recording exists and says that it has requested the Karimi recording from the Canadian government.

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<sup>2</sup> See, e.g., Ethan Bronner and Michael Smith, *Why Witnesses to Venezuela's Catastrophic Corruption Keep Turning Up in the U.S.*, Bloomberg, Dec. 8, 2016, <https://www.bloomberg.com/news/features/2016-12-08/why-witnesses-to-venezuela-s-catastrophic-corruption-keep-turning-up-in-the-u-s> (summarizing an unnamed PDVSA executive's statement to an attorney cooperating in this investigation that "he[ ha]d done nothing wrong" and noting that the executive was then questioned by DANY and the FBI).

U.S. Attorney's Office  
for the Southern District of New York  
March 24, 2020  
Page 6

Please produce the Karimi recording. The Karimi recording is favorable to the defense or would tend to exculpate Sadr or mitigate his culpability with respect to the charges in the indictment, would tend to impeach any potential witness against Sadr, and is relevant to the issue of sentencing.

**EXAMPLE VI – Renewed Search for Discoverable Material**

We request that the government conduct a search of material in DANY or SDNY's possession, custody, or control for information and documentation that is discoverable under Rule 16 or *Brady*. When SAUSA Lynch disclosed an exculpatory file to SDNY that had not previously been produced in discovery in January 2020, he made no mention of the fact that it was not part of discovery in this case or where he had obtained it. Regardless of whether the SDNY prosecutors knew that it came from somewhere else at DANY, SAUSA Lynch knew that it came from DANY files that had not been reviewed for potentially discoverable information. Based on DANY's possession of files containing information and documentation that is discoverable under Rule 16 or *Brady*, combined with SAUSA Lynch's and AUSA Lake's use of those files in furtherance of the case against our client, it appears that there may be many DANY physical or electronic files containing information favorable to the defense. Based on SDNY's involvement in the Commerzbank investigation, it appears that SDNY may have similar documents and information.

Please review the documents and information in DANY's possession, custody, or control and the documents and information in SDNY's possession, custody, or control, and produce any documents and information (in whatever form) that are favorable to the defense or that would tend to exculpate Sadr or mitigate his culpability with respect to the charges in the indictment, that would tend to impeach any potential witness against Sadr, or that are relevant to the issue of sentencing.

\* \* \*

The United States government has a duty to see that justice is done that rises above pursuit of a conviction. In this case, the government failed to produce all discoverable information and documents to the defense in a timely manner, and it appears likely that additional undisclosed material remains in the government's possession. We request that you supplement your previous disclosures by Friday April 3, 2020, so that we can use all such information and documentation in support of our post-trial motions, and, if necessary, sentencing proceedings.

U.S. Attorney's Office  
for the Southern District of New York  
March 24, 2020  
Page 7

Sincerely

/s/ Brian M. Heberlig

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**Exhibit B**  
*to April 1, 2020 Letter*

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February 3, 2020

By Electronic Mail

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Re: *United States v. Ali Sadr Hashemi Nejad*, Case No. 18-cr-224 (AJN)

Dear Counsel:

We previously submitted formal requests for “immediate identification and disclosure of all documents and information (in whatever form) that are favorable to the defense or that would tend to exculpate Sadr or mitigate his culpability with respect to the charges in the indictment, that would tend to impeach any potential witness against Sadr, or that are relevant to the issue of sentencing.” Dkt. No. 92-1 at 5 (noting that it incorporated previous requests). This included *Brady* information, *Giglio* information, and, among other enumerated categories, “[a]ny document or information indicating or tending to establish that any other person (including but not limited to the alleged co-conspirators) believed that any meeting, conversation, use of words, practice, or conduct that is the subject of the indictment or forms the basis of the indictment did not constitute a crime.” *Id.* “All of these requests are continuing in nature, requiring supplementation in accordance with Fed. R. Crim. P. 16(c).” *Id.* at 2 n.2.

We understand from the Department of Justice’s website that the government received *Brady* information on or about January 22, 2020, when Bahram Karimi—an unindicted co-conspirator whose statements the government is seeking to introduce against Sadr in this case

U.S. Attorney's Office  
for the Southern District of New York  
February 3, 2020  
Page 2

under Federal Rule of Evidence 801(d)(2)(E)—allegedly told “among other people, two FBI agents” that he “he didn’t know [the payments charged in the Indictment in this case] w[ere] prohibited by the sanctions.” Statement of U.S. Attorney Geoffrey Berman, <https://www.justice.gov/usao-sdny/pr/iranian-national-charged-bank-fraud-and-lying-federal-agents-connection-scheme-use-us>. During the same interview, Mr. Karimi allegedly told FBI agents that he “believed that international sanctions against Iran did not apply to Iranian companies or persons.” Karimi Indictment ¶ 13. Those statements, and any other evidence tending to evidence a lack of willfulness by Sadr or his alleged co-conspirators, are *Brady* information that must be promptly disclosed.

Sadr requests that the government immediately produce all prior witness statements of Bahram Karimi, including any recordings, memoranda, and notes reflecting the government’s January 22, 2020 interview of Mr. Karimi. This request specifically includes all recordings, memoranda, and notes taken by any Canadian law enforcement officials who were present. *See id.* (alleging that the January 22, 2020 interview occurred in Canada). Sadr further reiterates his request for discovery of all documents and information that indicate or tend to establish that Sadr or any other person believed that any meeting, conversation, use of words, practice, or conduct that is the subject of the indictment or forms the basis of the indictment did not constitute a crime. Sadr continues to request immediate identification and disclosure of all *Brady* information, *Giglio* information, and other evidence that is favorable to the defense or that would tend to exculpate Sadr or mitigate his culpability with respect to the charges in the indictment, that would tend to impeach any potential witness against Sadr, or that are relevant to the issue of sentencing.

Sincerely,

/s/ Brian M. Heberlig

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**Exhibit C**  
*to April 1, 2020 Letter*

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**From:** Kim, Jane (USANYS) 4 <Jane.Kim@usdoj.gov>  
**Sent:** Sunday, February 23, 2020 5:33 PM  
**To:** Heberlig, Brian; Krouse, Michael (USANYS); Weingarten, Reid; Silverman, Nicholas; Bishop, Bruce; Fragale, David  
**Cc:** Lake, Stephanie (USANYS); LynchG@dany.nyc.gov  
**Subject:** RE: Karimi interview notes and reports

The FBI has requested the recordings from Canada's RCMP, but we have not yet received them. Any recordings that we receive from Canada will be promptly produced to you.

---

**From:** Heberlig, Brian <BHeberlig@steptoe.com>  
**Sent:** Sunday, February 23, 2020 5:30 PM  
**To:** Krouse, Michael (USANYS) <MKrouse@usa.doj.gov>; Weingarten, Reid <RWeingarten@steptoe.com>; Silverman, Nicholas <nsilverman@steptoe.com>; Bishop, Bruce <BBishop@steptoe.com>; Fragale, David <DFragale@steptoe.com>  
**Cc:** Kim, Jane (USANYS) 4 <JKim4@usa.doj.gov>; Lake, Stephanie (USANYS) <SLake@usa.doj.gov>; LynchG@dany.nyc.gov  
**Subject:** RE: Karimi interview notes and reports

Counsel:

We are writing to renew our request for the recording of the Karimi interview in Canada. Please let us know if we will receive it this week. We would prefer not to file a motion to compel but may need to do so if we can't get an assurance that it will be provided promptly.

Thank you.

Brian

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**From:** Krouse, Michael (USANYS) <[Michael.Krouse@usdoj.gov](mailto:Michael.Krouse@usdoj.gov)>  
**Sent:** Wednesday, February 5, 2020 1:23 PM  
**To:** Heberlig, Brian <[BHeberlig@steptoe.com](mailto:BHeberlig@steptoe.com)>; Weingarten, Reid <[RWeingarten@steptoe.com](mailto:RWeingarten@steptoe.com)>; Silverman, Nicholas <[nsilverman@steptoe.com](mailto:nsilverman@steptoe.com)>; Bishop, Bruce <[BBishop@steptoe.com](mailto:BBishop@steptoe.com)>; Fragale, David <[DFragale@steptoe.com](mailto:DFragale@steptoe.com)>  
**Cc:** Kim, Jane (USANYS) 4 <[Jane.Kim@usdoj.gov](mailto:Jane.Kim@usdoj.gov)>; Lake, Stephanie (USANYS) <[Stephanie.Lake@usdoj.gov](mailto:Stephanie.Lake@usdoj.gov)>; [LynchG@dany.nyc.gov](mailto:LynchG@dany.nyc.gov)  
**Subject:** Karimi interview notes and reports

Brian,

I misspoke earlier—there were two prior interviews of Karimi before the interview on January 22, 2020 (so three total). Those two prior interviews were conducted on June 16, 2016 and September 14, 2016. Our understanding is that they were not recorded. The third interview (on January 22, 2020) was recorded, but RCMP has not yet provided us with a copy.

Accordingly, please find attached six documents which are being produced subject to the terms of the protective order: (1) the 302 report of the June 16, 2016 interview; (2) handwritten notes of the June 16, 2016 interview; (3)

handwritten notes of the September 14, 2016 interview; (4) notes of a brief coordination call with Karimi on October 21, 2019; (5) handwritten notes of the January 22, 2020 interview; and (6) the 302 report of the September 14, 2016 interview.

Best regards,

Michael

Michael Krouse  
Assistant United States Attorney  
Southern District of New York  
One St. Andrew's Plaza  
New York, NY 10007  
(212) 637-2279

---

**From:** Heberlig, Brian <[BHeberlig@steptoe.com](mailto:BHeberlig@steptoe.com)>

**Sent:** Wednesday, February 5, 2020 10:23 AM

**To:** Krouse, Michael (USANYS) <[MKrouse@usa.doj.gov](mailto:MKrouse@usa.doj.gov)>; Weingarten, Reid <[RWeingarten@steptoe.com](mailto:RWeingarten@steptoe.com)>; Silverman, Nicholas <[nsilverman@steptoe.com](mailto:nsilverman@steptoe.com)>; Bishop, Bruce <[BBishop@steptoe.com](mailto:BBishop@steptoe.com)>; Fragale, David <[DFragale@steptoe.com](mailto:DFragale@steptoe.com)>

**Cc:** Kim, Jane (USANYS) 4 <[JKim4@usa.doj.gov](mailto:JKim4@usa.doj.gov)>; Lake, Stephanie (USANYS) <[SLake@usa.doj.gov](mailto:SLake@usa.doj.gov)>; [LynchG@dany.nyc.gov](mailto:LynchG@dany.nyc.gov)

**Subject:** RE: U.S. v. Sadr

Thanks, Michael. This draft of the Protective Order is okay with us. -Brian

---

**From:** Krouse, Michael (USANYS) <[Michael.Krouse@usdoj.gov](mailto:Michael.Krouse@usdoj.gov)>

**Sent:** Wednesday, February 5, 2020 10:05 AM

**To:** Heberlig, Brian <[BHeberlig@steptoe.com](mailto:BHeberlig@steptoe.com)>; Weingarten, Reid <[RWeingarten@steptoe.com](mailto:RWeingarten@steptoe.com)>; Silverman, Nicholas <[nsilverman@steptoe.com](mailto:nsilverman@steptoe.com)>; Bishop, Bruce <[BBishop@steptoe.com](mailto:BBishop@steptoe.com)>; Fragale, David <[DFragale@steptoe.com](mailto:DFragale@steptoe.com)>

**Cc:** Kim, Jane (USANYS) 4 <[Jane.Kim@usdoj.gov](mailto:Jane.Kim@usdoj.gov)>; Lake, Stephanie (USANYS) <[Stephanie.Lake@usdoj.gov](mailto:Stephanie.Lake@usdoj.gov)>;

[LynchG@dany.nyc.gov](mailto:LynchG@dany.nyc.gov)

**Subject:** RE: U.S. v. Sadr

Brian,

Here is a revised protective order along the lines you suggested. There were two interviews of Karimi, and we will produce the notes and reports from both meetings. Our understanding is that the first interview was not recorded. The second interview was, and we will provide you with a copy once we have it.

Michael

Michael Krouse  
Assistant United States Attorney  
Southern District of New York  
One St. Andrew's Plaza  
New York, NY 10007  
(212) 637-2279

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**From:** Heberlig, Brian <[BHeberlig@steptoe.com](mailto:BHeberlig@steptoe.com)>

**Sent:** Wednesday, February 5, 2020 6:45 AM

**To:** Krouse, Michael (USANYS) <[MKrouse@usa.doj.gov](mailto:MKrouse@usa.doj.gov)>; Weingarten, Reid <[RWeingarten@steptoe.com](mailto:RWeingarten@steptoe.com)>; Silverman, Nicholas <[nsilverman@steptoe.com](mailto:nsilverman@steptoe.com)>; Bishop, Bruce <[BBishop@steptoe.com](mailto:BBishop@steptoe.com)>; Fragale, David <[DFragale@steptoe.com](mailto:DFragale@steptoe.com)>  
**Cc:** Kim, Jane (USANYS) 4 <[JKim4@usa.doj.gov](mailto:JKim4@usa.doj.gov)>; Lake, Stephanie (USANYS) <[SLake@usa.doj.gov](mailto:SLake@usa.doj.gov)>; [LynchG@dany.nyc.gov](mailto:LynchG@dany.nyc.gov)  
**Subject:** RE: U.S. v. Sadr

Michael,

Thanks for your response. Can you confirm that the government plans to produce information regarding all of Mr. Karimi's interviews, not limited to the most recent interview? Also, our request encompassed all recordings, 302 memoranda, and notes. Can you also confirm that you will produce all such materials? In particular, please confirm that you will produce the recording of the interview once you receive it from the Canadian authorities. If you decline to produce any of these materials, please let us know today so we can bring the issue to the Court's attention for the Monday conference.

We do not believe a protective order is necessary and do not intend to "disseminate" the 3500 materials beyond normal use in defending our client. However, if you insist upon an order, we cannot agree to the form of the order because it unfairly restricts our ability to defend our client. The order would need to be expanded to allow us to disclose 3500 materials to: (a) expert witnesses, investigators, expert advisors, consultants and vendors; (b) prospective witnesses, and their counsel; and (c) such other persons as may be authorized by agreement, in writing, of the parties or by the Court upon the defendant's motion. If you are unwilling to revise the protective order in this manner, we agree to abide by the terms of your draft order until the Court can resolve this dispute. Given that the Karimi materials are relevant to pending motions in limine that may be addressed by the Court on Monday, we request that you produce them immediately subject to our agreement not to further disseminate them beyond the defense team and the defendant until the Court can resolve the protective order issue.

Best, Brian

**Brian M. Heberlig**  
Partner  
[bheberlig@steptoe.com](mailto:bheberlig@steptoe.com)

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Click [here](#) to view my biography.

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**From:** Krouse, Michael (USANYS) <[Michael.Krouse@usdoj.gov](mailto:Michael.Krouse@usdoj.gov)>  
**Sent:** Tuesday, February 4, 2020 8:21 PM  
**To:** Heberlig, Brian <[BHeberlig@steptoe.com](mailto:BHeberlig@steptoe.com)>; Weingarten, Reid <[RWeingarten@steptoe.com](mailto:RWeingarten@steptoe.com)>; Silverman, Nicholas <[nsilverman@steptoe.com](mailto:nsilverman@steptoe.com)>; Bishop, Bruce <[BBishop@steptoe.com](mailto:BBishop@steptoe.com)>; Fragale, David <[DFragale@steptoe.com](mailto:DFragale@steptoe.com)>  
**Cc:** Kim, Jane (USANYS) 4 <[Jane.Kim@usdoj.gov](mailto:Jane.Kim@usdoj.gov)>; Lake, Stephanie (USANYS) <[Stephanie.Lake@usdoj.gov](mailto:Stephanie.Lake@usdoj.gov)>; [LynchG@dany.nyc.gov](mailto:LynchG@dany.nyc.gov)  
**Subject:** RE: U.S. v. Sadr

Brian,

Thank you for your letter. We are prepared to provide you with the notes of interviews with Bahram Karimi subject to a protective order. To that end, do you consent to the attached order for 3500 materials (and other witness interview notes)? If you consent, we will ask Judge Nathan to sign the order.

Thank you,

Michael Krouse  
Assistant United States Attorney  
Southern District of New York  
One St. Andrew's Plaza  
New York, NY 10007  
(212) 637-2279

---

**From:** Heberlig, Brian <[BHeberlig@steptoe.com](mailto:BHeberlig@steptoe.com)>  
**Sent:** Monday, February 3, 2020 7:49 AM  
**To:** Kim, Jane (USANYS) 4 <[JKim4@usa.doj.gov](mailto:JKim4@usa.doj.gov)>; Lake, Stephanie (USANYS) <[SLake@usa.doj.gov](mailto:SLake@usa.doj.gov)>; Krouse, Michael (USANYS) <[MKrouse@usa.doj.gov](mailto:MKrouse@usa.doj.gov)>; [LynchG@dany.nyc.gov](mailto:LynchG@dany.nyc.gov)  
**Cc:** Weingarten, Reid <[RWeingarten@steptoe.com](mailto:RWeingarten@steptoe.com)>; Silverman, Nicholas <[nsilverman@steptoe.com](mailto:nsilverman@steptoe.com)>; Bishop, Bruce <[BBishop@steptoe.com](mailto:BBishop@steptoe.com)>; Fragale, David <[DFragale@steptoe.com](mailto:DFragale@steptoe.com)>  
**Subject:** RE: U.S. v. Sadr

Please see the attached letter. -Brian

---

**From:** Heberlig, Brian  
**Sent:** Friday, January 31, 2020 12:24 PM  
**To:** 'Kim, Jane (USANYS) 4' <[Jane.Kim@usdoj.gov](mailto:Jane.Kim@usdoj.gov)>; Lake, Stephanie (USANYS) <[Stephanie.Lake@usdoj.gov](mailto:Stephanie.Lake@usdoj.gov)>; Krouse, Michael (USANYS) <[Michael.Krouse@usdoj.gov](mailto:Michael.Krouse@usdoj.gov)>; [LynchG@dany.nyc.gov](mailto:LynchG@dany.nyc.gov)  
**Cc:** Weingarten, Reid <[RWeingarten@steptoe.com](mailto:RWeingarten@steptoe.com)>; Silverman, Nicholas <[nsilverman@steptoe.com](mailto:nsilverman@steptoe.com)>; Bishop, Bruce <[BBishop@steptoe.com](mailto:BBishop@steptoe.com)>; Fragale, David <[DFragale@steptoe.com](mailto:DFragale@steptoe.com)>  
**Subject:** RE: U.S. v. Sadr

Please see the attached letter. -Brian

---

**From:** Kim, Jane (USANYS) 4 <[Jane.Kim@usdoj.gov](mailto:Jane.Kim@usdoj.gov)>  
**Sent:** Thursday, January 30, 2020 1:09 PM

**To:** Heberlig, Brian <[BHeberlig@steptoe.com](mailto:BHeberlig@steptoe.com)>; Lake, Stephanie (USANYS) <[Stephanie.Lake@usdoj.gov](mailto:Stephanie.Lake@usdoj.gov)>; Krouse, Michael (USANYS) <[Michael.Krouse@usdoj.gov](mailto:Michael.Krouse@usdoj.gov)>; [LynchG@dany.nyc.gov](mailto:LynchG@dany.nyc.gov)  
**Cc:** Weingarten, Reid <[RWeingarten@steptoe.com](mailto:RWeingarten@steptoe.com)>; Silverman, Nicholas <[nsilverman@steptoe.com](mailto:nsilverman@steptoe.com)>; Bishop, Bruce <[BBishop@steptoe.com](mailto:BBishop@steptoe.com)>; Fragale, David <[DFragale@steptoe.com](mailto:DFragale@steptoe.com)>  
**Subject:** RE: U.S. v. Sadr

Counsel:

Please see the attached letter. We are available to meet and confer tomorrow afternoon after 3:45pm, over the weekend, or on Monday between 12 and 2pm.

During our call, we'd like to also discuss stipulations and exhibits. With respect to exhibits, for the pages of documents we expect to use at trial, we need to pull clean, electronic, text-searchable copies of the documents from the discovery produced to you in November 2018. We'd like to complete this process in short order so that we can prepare and produce these documents to you as exhibits in advance of trial. Please let us know if you have any concerns.

Thanks,  
Jane

---

**From:** Heberlig, Brian <[BHeberlig@steptoe.com](mailto:BHeberlig@steptoe.com)>  
**Sent:** Wednesday, January 29, 2020 10:25 AM  
**To:** Lake, Stephanie (USANYS) <[SLake@usa.doj.gov](mailto:SLake@usa.doj.gov)>; Krouse, Michael (USANYS) <[MKrouse@usa.doj.gov](mailto:MKrouse@usa.doj.gov)>; [LynchG@dany.nyc.gov](mailto:LynchG@dany.nyc.gov); Kim, Jane (USANYS) 4 <[JKim4@usa.doj.gov](mailto:JKim4@usa.doj.gov)>  
**Cc:** Weingarten, Reid <[RWeingarten@steptoe.com](mailto:RWeingarten@steptoe.com)>; Silverman, Nicholas <[nsilverman@steptoe.com](mailto:nsilverman@steptoe.com)>; Bishop, Bruce <[BBishop@steptoe.com](mailto:BBishop@steptoe.com)>; Fragale, David <[DFragale@steptoe.com](mailto:DFragale@steptoe.com)>  
**Subject:** U.S. v. Sadr

Please see the attached letter and let us know when you are available to meet and confer. Thanks.

Best, Brian

**Brian M. Heberlig**  
Partner  
[bheberlig@steptoe.com](mailto:bheberlig@steptoe.com)

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