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June 20, 2006

**VIA FACSIMILE and
ELECTRONICALLY FILED**

Honorable William B. Shubb
United States District Court Judge
501 I Street
Sacramento, CA 95814

RE: U.S. v. Mohsen, CR 03-0095 WBS

Your Honor:

On June 19, 2006, the government received a copy of a letter from John Balazs, Esq., to the Court which advised that "the law firm of Weinberg and Wilder [] is expected to be *retained* to represent Dr. Mohsen in the above-entitled case for all further proceedings." 6/19/06 Balazs letter, emphasis supplied. The government has several concerns about the proposed substitution of counsel that it wishes to raise with the Court in advance of the hearing scheduled for June 23, 2006.

As an initial matter, Mohsen's current counsel (Bruce Locke, and John Balazs) are the fourth set of attorneys that have represented Mohsen in this criminal case. Mr. Locke and Mr. Balazs were both appointed by the Court under the Criminal Justice Act based upon Mohsen's sworn factual representations of indigence. We respectfully request the Court to (1) make a thorough inquiry into the source of funding for Weinberg and Wilder's fees; and, (2) determine whether the funds available for Weinberg and Wilder's proposed representation should instead be used to reimburse the CJA program for the money the public has already spent on Mohsen's criminal defense.

Second, we respectfully advise the Court that the law firm of Weinberg and Wilder has an actual conflict of interest that must be fully explored before the Court can consider permitting Mr. Locke and Mr. Balazs to withdraw from this case. The law firm of Weinberg and Wilder represented a government witness, Magda Metwally, who was an unindicted co-conspirator in this case and who is also the sister of Amr Mohsen and co-defendant Aly Mohsen. Magda Metwally was called as a witness by the government in its case-in-chief during Phase 2 of the trial. Prior to calling Ms. Metwally as a trial witness, on January 20, 2006, the government met with Ms. Metwally and her attorney, Doron Weinberg, Esq., at the U.S. Attorney's Office. A true and correct copy of the written agreement governing that meeting (which was signed by all parties and Mr. Weinberg, as counsel to Ms. Metwally) is attached hereto as Exhibit 1.

Government counsel had several discussions with Mr. Weinberg both before and after the January 20, 2006 meeting concerning his representation of Magda Metwally. Mr. Weinberg informed the government that Ms. Metwally viewed herself as having criminal exposure in the case and further advised that Ms. Metwally would invoke her right against self-incrimination if she were called to testify by the government.

Based upon Mr. Weinberg's representation of Ms. Metwally's interests (which interests involved Metwally providing incriminating testimony against her brother, Amr Mohsen), the government secured a grant of use immunity in exchange for Ms. Metwally's testimony.

On March 7, 2006, Magda Metwally testified as a witness in the government's case-in-chief. At all times before and during her testimony, Ms. Metwally was represented by Doron Weinberg and Nina Wilder. Mr. Weinberg and Ms. Wilder's representation was a fact presented to the jury as part of the government's direct examination of Ms. Metwally. Attached hereto as Exhibit 2 are true and correct excerpts of Ms. Metwally's trial testimony, including her discussion of the fact that she is represented by Weinberg and Wilder.

We note that Rule 3-310(B) of the California Rules of Professional Conduct provides: "A member shall not accept or continue representation of a client without providing written disclosure to the client where: (1) The member has a legal, business, financial, professional, or personal relationship with a party or *witness* in the same matter." Emphasis added. Rule 3-310(C) states: "A member shall not, without the informed written consent of each client: (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict." Thus, the Rule requires a written waiver from Amr Mohsen *and* Magda Metwally.

A criminal defendant has a Sixth Amendment right to a conflict-free attorney. *United States v. Mett*, 65 F.3d 1531, 1534 (9th Cir. 1995). Although a trial court may allow an attorney to proceed despite a conflict, the court must "indulge every reasonable presumption against the waiver of a fundamental right." *United States v. Allen*, 831 F.2d 1487, 1498 (9th Cir. 1987). In *Wheat v. United States*, 486 U.S. 153 (1988), the Supreme Court held that a criminal defendant's presumptive right to counsel of choice may be overcome by the district court's independent interest in "ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *Id.* at 160. The Court noted that the decision to override a criminal defendant's waiver of a conflict "must be left primarily to the informed judgment of the trial court." *Id.* at 164.

In this case, Mohsen has already been represented by four different sets of attorneys. Mohsen has filed a *pro se* motion alleging that his fourth set of attorneys (Locke and Balazs) rendered ineffective assistance of counsel during their representation. Under the circumstances of this case, it is not unreasonable to assume that Mohsen will eventually claim that his fifth set of attorneys, whoever they may be, rendered ineffective assistance. Thus, even if Amr Mohsen and Magda Metwally were both to waive Weinberg and Wilder's conflict of interest, we respectfully submit that the Court must carefully weigh such a purported waiver against the essential aim of the Sixth Amendment which is to guarantee "an effective advocate for each

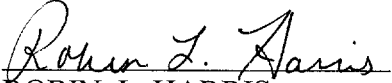
criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.” *Id.* Thus, it would clearly be well within this Court’s discretion to override any waiver of Weinberg and Wilder’s conflict in order to ensure that Mohsen receives the full benefit of the Sixth Amendment and to protect the record against a future ineffective assistance claim based upon an obvious conflict of interest.

Finally, the government objects to any continuance of the hearing on the defendant’s motion for a new trial. That motion has been fully briefed and should be argued as scheduled on June 23, 2006.

Very truly yours,

KEVIN V. RYAN
United States Attorney

cc. Bruce Locke, Esq. (via fax)
John Balazs, Esq. (via fax)
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