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August 25, 2009

Ms. Molly Dwyer
Clerk, U.S. Court of Appeals
Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *United States v. Mohsen* No. 07-10059
Oral Argument set for Monday, August 31st, at 9:00 a.m., before Judges A. Kleinfeld, B. Fletcher, and K. Duffy of the Southern District of New York, sitting by designation.

Dear Ms. Dwyer:

Under Fed.R.App.Pro. 28(j), appellant Mohsen brings the following recent authority to the Court's attention.

In *United States v. Benford*, ___F.3d__ 2009 WL 2357774 (Aug. 3, 2009), Judges Rymer, Graber, and Bea affirmed two principles crucial to Mohsen's lead argument that he was deprived of his right to counsel at a critical stage of his trial. (Opening Brief Section IV., Reply Section I.). First, the panel noted that receipt and consideration of a jury note, as occurred here, is a critical stage of a trial requiring the presence of counsel. *Id.* at *3 (citing *Frantz v. Hazey*, 533 F.3d 724, 743 (9th Cir. 2008) (en banc)). Secondly, *Benford* reiterated that the deprivation of the right to counsel at a critical stage cannot be deemed harmless, as "prejudice is presumed." *Id.* (citing *Musladin v. Lamarque*, 555 F.3d 830, 836 (9th Cir. 2009) ("[C]ourts are 'require[d] . . . to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial.'")).

Also, in *United States v. Reyes*, --- F.3d ----, 2009 WL 2501920 (9th Cir. Aug. 18, 2009), this Court reversed an executive's conviction for falsifying company records, on the basis that the prosecutor had impermissibly made false statements in closing arguments. In doing so, this Court reaffirmed the importance of a prosecutor's closing argument, because "a 'prosecutor's opinion carries with it the imprimatur of the Government and may induce the jury to trust the Government's judgment rather than its own view of the evidence.'" *Id.* at *6 (quoting *United States v. Young*, 470 U.S. 1, 18-19 (1985)). This Court also found prejudice from the prosecutor's false argument because "closing statements from the prosecution 'matter a great deal.'" *Id.* at *7 (quoting *United States v. Kojayan*, 8 F.3d 1315, 1323 (9th Cir. 1993)).

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The *Reyes* decision supports Appellant Mohsen's argument that the prosecutors in this case engaged in impermissible vouching, and that the vouching was prejudicial. (Opening Brief Section II.D). The *Reyes* case also supports Appellant's argument with respect to prosecutor Harris's dual role as witness and advocate. (Opening Brief Section VIII.).

Sincerely,

/s/ Dennis P. Riordan
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Attorney for Appellant AMR MOHSEN

cc: Amber S. Rosen, Assistant U.S. Attorney