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April 14, 2010

VIA ECF

The Honorable Frederic Block
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Afzali, Cr. No. 09-716 (FB)

Dear Judge Block:

The government respectfully submits this letter concerning tomorrow's sentencing of defendant Ahmad Wais Afzali. The government agrees with the factual discussion and Guidelines analysis in the Presentence Investigation Report. However, with respect to Afzali's sentencing memorandum dated April 9, 2010, we are compelled to respond to factual misstatements contained in the memorandum's discussion of the underlying terrorism investigation and its conclusion.

The defense memorandum concludes by portraying Afzali as, in essence, a victim: a victim of the FBI, a victim of his own naivete and good heart, and a victim, more generally, of an unforgiving government. Afzali goes so far as to claim that he was simply trying to help law enforcement, and his payback is the FBI using him as a scapegoat for its own "series of foul-ups." This is nonsense. On one hand, Afzali prides himself as a scholar, a successful businessman and a leader of the community. Yet, he would have the Court believe that he is so naive that he thought it was appropriate - indeed, helpful to law enforcement - to (1) tip-off three targets of a terrorism investigation that law enforcement was asking about them, (2) warn one of them, Najibullah Zazi, that his phone was likely being monitored, and (3) conceal these facts from his NYPD handlers. Afzali is many things, but naive is not one of them. He knew that what he did was wrong, and that is the reason why he hid it from the NYPD and later lied about it to the FBI.

Afzali also claims that he did not compromise the investigation because Najibullah Zazi already suspected that law enforcement was monitoring him before his first phone call with Afzali. Regardless of Zazi's suspicions before encountering Afzali, the fact is that there were two additional al-Qaeda trained suicide bombers under investigation, Adis Medunjanin and Zarein Ahmedzay, and Afzali's actions alerted them that they were under scrutiny as well. This compromised the investigation. While the government does not believe that this should have any impact the Guidelines calculation, Afzali raised the issue with the Court and we are obligated to correct him.

Respectfully submitted,

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