UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

SEALED/EX PARTE

UNITED STATES OF AMERICA,)	
)	Crim. No. 13-2106 MBB
v.)	
)	
)	
DZHOKHAR TSARNAEV)	

SEALED EX PARTE MOTION TO ORDER THE BUREAU OF PRISONS TO PROVIDE COPIES OF THE DEFENDANT'S FILES TO DEFENSE COUNSEL ON A WEEKLY BASIS

The Defendant, Dzhokhar Tsarnaev, by counsel, files this *Ex Parte*, Sealed Motion for An Order Compelling the Bureau of Prisons to Provide Copies of the Defendant's BOP files to Defense Counsel on a Weekly Basis.

Defendant Dzhokhar Tsarnaev is a pretrial detainee currently housed at FMC Devens, a facility run by the federal Bureau of Prisons (BOP). As this Court is aware, Mr. Tsarnaev is facing a possible federal capital prosecution, arising out of what has been referred to as the April 15, 2013 "Boston Marathon Bombings." FMC Devens/BOP counsel Les Owens advised defense counsel that FMC Devens can routinely and regularly produce Mr. Tsarnaev's BOP medical file to defense counsel as soon as Mr. Tsarnaev signs a release (counsel anticipates obtaining the necessary release by Wednesday, May 8, 2013). In order to obtain other BOP files – which include daily activity logs, suicide watch logs, psychology data systems files, photographs, commissary file, and the BOP "central file" – counsel must obtain a court order. Thus, counsel seek

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an Order compelling BOP to produce all BOP files on a regular basis (weekly) to counsel

for Mr. Tsarnaev. 1

In addition, BOP counsel Les Owens advises that while defense counsel must

obtain a release for medical files, and a court order for production of the remaining BOP

files, all of these files are freely available to the prosecution, simply upon their request

and without a court order. Defense counsel object to this unrestricted, free access to

information regarding their client in this potential capital prosecution, and seek a

protective order from this court, prohibiting FMC Devens/BOP from providing any files

regarding Mr. Tsarnaev, absent an opportunity for defense counsel to object, and

following a specific order of this Court directing the production.

This motion is based upon the Fifth, Sixth and Eighth Amendments to the U.S.

Constitution, and is filed ex parte and under seal in order to protect defense work

product.

DATED: May 7, 2013

JUDY CLARKE

MIRIAM CONRAD

WILLIAM FICK

TIMOTHY WATKINS

Attorneys for Dzhokhar Tsarnaev

Regular production will aid counsel in monitoring their client's status, medical condition, and potential treatment needs, as well as understanding his adjustment to incarceration.

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UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

SEALED/EX PARTE

UNITED STATES OF AMERICA, v. DZOHKHAR TSÅRNAEV) Crim. No. 13-2106 MBB) ORDER RE PRODUCTION OF BOP RECORDS)	
Before the Court is defendant's	ex parte, sealed motion for an Order Compelling	
the Bureau of Prisons to Provide Copies of the Defendant's Files to Counsel on a Weekly		
Basis, and to restrict access to the prose	cution.	
Having reviewed the motion and	I good cause appearing therefor, the Court hereby	
grants the request, and ORDERS the Bureau of Prisons to provide the Defendant's BOP		
files - including the medical file, the d	aily activity logs, suicide watch logs, psychology	
data systems files, photographs, comm	issary file, the "yellow file", medication log, and	
the BOP "central file." The Court further ORDERS the Bureau of Prisons not to produce		
any files regarding Mr. Tsarnaev to the	e U.S. Attorney's office or other law enforcement	
agency involved in the prosecution of Mr. Tsarnaev absent further order of this Court.		
IT IS SO ORDERED.		
Dated:	Honorable Marianne B. Bowler	

United States Magistrate Judge