UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	**Crim. No.13-10200-GAO**
	)	
DZHOKHAR A. TSARNAEV,	)	**UNDER SEAL**
Defendant	)	

MOTION FOR ORDER AUTHORIZING
BIDMC TO DISCLOSE DEFENDANT'S CT FILMS

The United States, by and through counsel, respectfully moves for an order authorizing Beth Israel Deaconess Medical Center ("BIDMC") to disclose films of computed tomography ("CT") scans of the defendant's head and brain taken when he was a patient there. As grounds for this motion, the government states the following.

Tsarnaev has provided notice of his intent to call Dr. Jay Giedd to testify about "contemporary brain research focused on the development and maturation of the human brain from birth to adulthood, with specific attention to the period of adolescence and early adulthood." (Deft. letter to Gov't dated 11/24/14 at 4). The government has already moved in limine to exclude Dr. Giedd's testimony entirely. If that motion is granted, this motion is moot. If it is not granted, then the government seeks access to all images, films, results and reports associated with CT scans of Tsarnaev's head and brain that were taken during the period April 19, 2013 - April 22, 2013 at BIDMC. The government and its expert believe that these materials would assist it in preparing to cross-examine Dr. Giedd and prepare rebuttal. BIDMC has informed the government that it will voluntarily provide the materials provided the Court issues an order authorizing it to do so notwithstanding the privacy provision of the Health Insurance Portability and Accountability Act ("HIPAA"), 42 U.S.C. §§ 1320d et seq.

HIPPA and its implementing regulations establish "a set of basic national privacy standards and fair information practices" for health information. Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82462, 82469 (Dec. 28, 2000). The regulations provide that "[a] covered entity may not use or disclose protected health information" except under certain enumerated circumstances. 45 C.F.R. § 164.502(a). One of those circumstances is to comply with "an order of a court." 45 C.F.R. § 164.512(e)(1). See In re New England Compounding Pharm., Inc., 2013 WL 6058483, at *12 (D. Mass. Nov. 13, 2013); McEvoy v. Hillsborough County, 2011 WL 1813014, at *6 (D.N.H. May 5, 2011); United States ex. rel Kaplan v. Metropolitan Ambulance, 395 F.Supp.2d 1, 3 (E.D.N.Y. 2005).

WHEREFORE, the government respectfully requests that the Court enter the attached Order directing BIDMC to provide the government with all images, films, results and reports associated with CT scans of Tsarnaev's head and brain that were taken during the period April 19, 2013 - April 22, 2013.

Respectfully submitted,

CARMEN M. ORTIZ
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CERTIFICATE OF SERVICE

I hereby certify that this document was served by electronic mail on Dzhokhar Tsarnaev's attorney, Judy Clarke, Esq., on April 22, 2015.

/s/ William Weinreb