

Docket No. 16-6001

In The United States Court of Appeals
For The First Circuit

2016 JUL 14 A 11: 541

FILED IN CLERKS OFFICE
US COURT OF APPEALS
FOR THE FIRST CIRCUIT

UNITED STATES OF AMERICA

Appellee

v.

DZHOKHAR TSARNAEV

Defendant - Appellant

MOTION TO SEAL EX PARTE ADDENDUM TO EX PARTE CJA
MOTION FOR TRAVEL AUTHORIZATION

The Defendant-Appellant, Dzhokhar Tsarnaev, by his counsel, and pursuant to Local R. 11.0(c)(2), hereby moves this Court to seal his Ex Parte Addendum to Ex Parte CJA Motion for Travel Authorization.

1. Mr. Tsarnaev seeks leave to file under seal his Ex Parte Addendum to Ex Parte CJA Motion for Travel Authorization. Federal court documents submitted under the CJA are typically filed under seal and ex parte. This Court's Electronic Case Filing procedures provide that counsel cannot use the CM/ECF system to file CJA vouchers and also "other documents relating to compensation and reimbursement for representation and for ancillary services and expenses." CM/ECF User's Guide, U.S. Court of Appeals for the First Circuit (rev. July 24,

2013), p. 50. The document sought to be filed and submitted under seal falls into that category.

2. The constitutional and common-law rights of access to court documents apply only to judicial documents. *In re Boston Herald, Inc.* 321 F. 3d 174, 180 (1st Cir. 2003). “Not all documents filed with a court are considered ‘judicial documents.’” *Id.* (quoting *United States v. Gonzales*, 150 F.3d 1246, 1255 (10th Cir.1998)). Like the documents addressed in *In re Boston Herald* regarding whether a defendant was financially eligible for court-appointed representation under the CJA, the Ex Parte CJA Motion for Travel Authorization is “not essentially judicial in character.” *Id.* (“While we do not rely on this as the basis for our decision, we note that the administrative process of determining CJA eligibility is far removed from the core of the judicial function.”). The document sought to be sealed here requires the attention of the Court while exercising its administrative function, not its judicial function. Because there is neither a constitutional nor a common-law right of public access to this Motion, it is appropriate for the Court to grant leave for it to be filed and submitted under seal.

3. Requiring public filing of the Addendum to the Ex Parte CJA Motion for Travel Authorization would necessarily prevent that Motion from being filed ex

parte and would be fundamentally unfair. The government attorneys who are defending Mr. Tsarnaev's convictions and death sentences on appeal are doing so at public expense with no requirement that they disclose to Mr. Tsarnaev's attorneys or the public any documents relating to their compensation for travel related to their work in this capital appeal. Likewise, if Mr. Tsarnaev were financially able to pay for counsel on appeal, he would not be required to disclose to government counsel or the public any such documents relating to his appellate counsel's travel schedule and fees and costs. The fact that he is financially unable to pay for counsel on appeal should not be allowed to result in any potentially distracting public discussion about the travel and funding authorization for travel of his court-appointed appellate representation in this capital case.

WHEREFORE, for all these reasons, Mr. Tsarnaev respectfully asks this Court for leave to file under seal his Ex Parte Addendum to Ex Parte CJA Motion for Travel Authorization.

Respectfully submitted,

DZHOKHAR TSARNAEV

by his attorneys:



Gail K. Johnson, Esq.

Court of Appeals # 1173144

Johnson, Brennan & Klein, PLLC

1470 Walnut Street, Suite 101

Boulder, CO 80302

(303) 444-1885

GJOHNSON@JBK-LAW.COM

David Patton, Esq.

Court of Appeals # 1173507

Federal Defenders of New York, Inc.

52 Duane Street, 10th Floor

New York, NY 10007

(212) 417-8700

DAVID_PATTON@FD.ORG

Judy Clarke, Esq.

Court of Appeals # 1166489

CLARKE & RICE, APC

1010 Second Avenue, Suite 1800

San Diego, CA 92101

(619) 308-8484

JUDYCLARKE@JCSRLAW.NET

Johnson, Brennan & Klein, PLLC
1470 Walnut Street, Suite 101
Boulder, CO 80302

Case: 16-6501 Document: 00117029433

Page: 5

Date Filed: 07/14/2016

Entry ID: 6017641

Boulder
CO 802
11 JUL '16
PM 3 4

jbk law
JOHNSON, BRENNAN & KLEIN



**USMS
SCREENED**

United States Court of Appeals for the First Circuit
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

02210-300425

