

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	Crim. No.13-10200-GAO
)	
DZHOKHAR A. TSARNAEV,)	<u>FILED UNDER SEAL</u>
Defendant)	

GOVERNMENT'S MOTION TO SUPPLEMENT JURY QUESTIONNAIRE

The United States of America, by and through its undersigned counsel, respectfully moves to supplement the jury questionnaire with the following question:

Do you believe the United States government sometimes attacks U.S. citizens or property and blames it on others in order to justify the "war on terror"?

The government proposes placing this question immediately after Question No. 66 in the parties' Joint Proposed Jury Questionnaire. The question's purpose is to help identify "conspiracy theorists" who may view the evidence at trial through a lens darkened by suspicion of the government. As set forth below, the danger of encountering such prejudice in this case is significant.

Many news outlets have reported that a segment of the population believes the United States government "framed" the Tsarnaev brothers in order to promote antipathy towards Muslims. See, e.g. <http://www.nydailynews.com/news/national/conspiracy-theorists-social-media-offer-proof-tsarnaev-innocent-article-1.1325667> (noting that the "Free Jahar" movement claims over 14,000 adherents and "[s]ome are saying the bombing, like other recent tragedies, was staged by the government"); <http://www.businessinsider.com/the-craziest-conspiracy-theories-of-the-freejahar-movement-2013-7> (noting that more than 8,000 individuals have subscribed to a Facebook page that supports the view that the brothers were "framed"); http://www.salon.com/2013/07/10/conspiracy_theorists_for_dzhokhar/ (noting that some "think

Tsarnaev is a patsy to cover up the fact that the real mastermind of the bombings was the U.S. government”). The belief that the Tsarnaevs were “framed” appears to reflect a deep distrust of the government when it comes to the “war on terror.” See, e.g., <http://www.911truth.org/>.

In negotiations with the defense, the government initially proposed the following question as a means of trying to identify war-on-terror “conspiracy theorists:” “Do you believe the September 11, 2001 attacks on the United States were carried out by al Qaeda? If not, who do you believe is responsible for those attacks?” The defense objected on the ground that the question might suggest to potential jurors a connection between the Marathon bombings and either the September 11 attacks or al Qaeda. In response to that objection, the government agreed to eliminate from the question any references to September 11 or al Qaeda. When the government then proposed the substitute question set forth at the beginning of this motion, the defense raised a different objection: that the question might incorrectly suggest to potential jurors that Tsarnaev’s own defense theory is that the government “framed” him.

The government does not believe Tsarnaev’s concern is well-founded. The government’s proposed question is phrased very generally, without any particular reference to this case, and no other question in the questionnaire even hints at a “framing” defense. A juror who is not himself a “conspiracy theorist” is unlikely to infer from the proposed question that Tsarnaev’s own defense theory is that he was “framed.” At the same time, no other question in the questionnaire is likely to help identify actual war-on-terror “conspiracy theorists,” of which there appear to be many. On balance, therefore, the question is likely to do much good without presenting a substantial risk of harm.

WHEREFORE, the government respectfully moves the Court to grant this motion and include the government's proposed question in the jury questionnaire.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served by electronic mail on Dzhokhar Tsarnaev's counsel, Miriam Conrad, Esq, Federal Public Defender Service, on December 2, 2014.

/s/ William D. Weinreb
WILLIAM D. WEINREB