

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, )  
 )  
 v. ) Crim. No. 13-10200-GAO  
 )  
 DZHOKHAR TSARNAEV )

**AGREED-UPON PRELIMINARY JURY INSTRUCTIONS**

Counsel for the government and for the defendant, Dzhokhar Tsarnaev, hereby submit the attached agreed-upon proposed jury instructions to be given (1) to the jury venire members prior to the distribution of written questionnaires, and (2) prior to the beginning of oral questioning of prospective jurors on their voir dire.

Dated: December 1, 2014

Respectfully Submitted,

DZHOKHAR TSARNAEV  
By his attorneys

/s/ David I. Bruck

Judy Clarke, Esq. (CA Bar# 76071)  
CLARKE & RICE, APC  
1010 Second Avenue, Suite 1800  
San Diego, CA 92101  
(619) 308-8484

[JUDYCLARKE@JCSRLAW.NET](mailto:JUDYCLARKE@JCSRLAW.NET)  
David I. Bruck, Esq. (SC Bar # 967)  
220 Sydney Lewis Hall  
Lexington, VA 24450  
(540) 458-8188  
[BRUCKD@WLU.EDU](mailto:BRUCKD@WLU.EDU)

Miriam Conrad, Esq. (BBO # 550223)

Timothy Watkins, Esq. (BBO # 567992)  
William Fick, Esq. (BBO # 650562)  
FEDERAL PUBLIC DEFENDER OFFICE  
51 Sleeper Street, 5th Floor  
(617) 223-8061  
[MIRIAM\\_CONRAD@FD.ORG](mailto:MIRIAM_CONRAD@FD.ORG)  
[TIMOTHY\\_WATKINS@FD.ORG](mailto:TIMOTHY_WATKINS@FD.ORG)  
[WILLIAM\\_FICK@FD.ORG](mailto:WILLIAM_FICK@FD.ORG)

**Certificate of Service**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on December 1, 2014.

*/s/ David I. Bruck*

**JOINT REQUESTED PRELIMINARY INSTRUCTIONS  
CONCERNING JURY QUESTIONNAIRES**

Good morning, ladies and gentlemen. I want to welcome you to this proceeding of the United States District Court for the District of Massachusetts, and to thank you for coming here today.

We are about to begin the process of selecting a jury for a criminal case. The name of the case is *United States v. Dzhokhar Tsarnaev*. Mr. Tsarnaev is charged in connection with a bombing that occurred near the finish line of the Boston Marathon on April 15, 2013, and that resulted in the deaths of three people. Mr. Tsarnaev is also charged in the death of an MIT police officer three days later, and with additional crimes that occurred in Cambridge, Boston and Watertown on the night of April 18-19, 2013.

As in every criminal case, the defendant is presumed innocent of all of these charges, and the government bears the burden of proving his guilt beyond a reasonable doubt. The jury that we are about to start selecting today and in the next several days will have the task of listening to the evidence and deciding whether the government has proven the defendant's guilt of the charges against him beyond a reasonable doubt.

This case differs from many other criminal cases, however, in the following way. When a jury convicts a defendant of a crime, the law usually requires that the judge, and not the jury, decides what the punishment should be. In this case, however, if the jury finds Mr. Tsarnaev guilty of crimes that carry a possible death sentence, the jury, rather than the judge, will be required to decide whether Mr. Tsarnaev should be sentenced to death or to life in prison without possibility of release — the only other possible sentence for those crimes.

When I finish these preliminary remarks, a questionnaire will be distributed to you. You will fill out the questionnaire before leaving today. As you fill it out, please do not discuss the questions or your answers with anyone else in the room. Also, please understand that there are no right or wrong answers to the questions contained in the form. All we ask is that you answer each question *truthfully* and *completely* to the best of your ability. The questionnaires are not designed to pry into personal matters unnecessarily. Using questionnaires makes the process less time-consuming and inconvenient for you.

When you have filled out the questionnaire and given it to the Court's staff, you will be free to leave. During the coming week, the questionnaires will be copied, and then reviewed by the attorneys working on this case and by me. The completed questionnaire will initially be reviewed only by the participants in this case and by the court. The filled-out questionnaires will not become part of the public record until I determine whether they include any sensitive information that should be kept confidential permanently. If they do, I intend to keep that information, and any possible further questioning concerning it, from being available to the public. Moreover, even when filled-out questionnaires are eventually made public, they will be identified only by juror number, not by the jurors' names.

You must call in to the telephone number that you have been given on \_\_\_\_, January \_\_\_\_, after 5:00 p.m., and listen to a pre-recorded message that will tell you about your possible future service in this case. Some jurors will be told then that they have been excused permanently. Some jurors will be told to come to court again on

\_\_\_\_\_, January \_\_, 2015, to participate further in the jury selection process.

And some jurors will be told to call in at a later date for further instructions.

If you are concerned that service as a juror in this case will be a particular hardship for you, you will have a chance to describe that hardship on the questionnaire. If you are not excused based on what you wrote, I will discuss your hardship request in person with you when you come back to court. Any request to be excused will be seriously considered. However, I cannot guarantee that you will necessarily be excused if you think jury service in this case would be a hardship for you, because finding a jury that represents a fair cross-section of the community will always pose some degree of hardship for the citizens who are chosen to serve.

The process of jury selection will continue for some of you beginning on, January \_\_, as groups of jurors are called in daily for individual discussion about their ability to serve. Although it is not possible to predict exactly, I expect it will take up to \_\_\_ weeks to complete the selection of the jurors for this case.

If you are selected to serve, the trial is expected to start by about January 26 and is expected to last up to \_\_\_ weeks. However, sometimes cases take longer than expected, so jurors should plan to be available until \_\_\_\_\_ A p r i l \_\_\_\_, 2015. Except when deliberating to decide the case, the jury will sit on Monday, Tuesday, Wednesday, and Thursday, from about 9:00 a.m. to 4:00 p.m., with time off for breaks and lunch. The jury will not sit on Fridays, unless it is deliberating, or o n d a y s w h e n national or religious holidays fall. The trial will continue through the February school vacation week and, if still in progress, the April school vacation week. I do not plan to

sequester the jury. Therefore, jurors should be able to go home every day.

There has been a great deal of publicity about this case. I expect that the media will continue to report on it. The mere fact that you may have read or heard something about the case does not mean that you cannot be a juror. We simply need to know what you have read, seen, heard, or experienced in relation to the case. There are no “right answers.” We only want your honest and true thoughts and opinions. The purpose of the jury selection process is to try to ensure that each person selected is an appropriate juror for this case, and that the jury as a whole will fairly represent the community.

This criminal case has been brought by the United States government. I will sometimes refer to the government as the prosecution. The government is represented at this trial by Assistant United States Attorneys Alope Chakravarty, Steven Mellin, Nadine Pellegrini, and William Weinreb, whom I will ask to stand. The defendant, Dzhokhar Tsarnaev, is represented by Attorneys David Bruck, Judy Clarke, Miriam Conrad, Bill Fick, and Tim Watkins, whom I will also ask to stand and introduce Mr. Tsarnaev.

Although you have only heard briefly about this case this morning and, indeed, have heard no evidence as yet, it is extremely important that you do not discuss this case among yourselves or with anyone else. That is because a jury’s verdict must be based on the evidence, and must be free from outside influence. Therefore, I am ordering each of you not to discuss this case with your family, friends or any other person until I either excuse you, or if you are selected as a juror, until the case concludes. You may tell others that you may be a juror in this case, and may discuss the schedule with your family and employer,

because they are entitled to know when you might not be available. However, you are not to discuss anything else or allow anyone to discuss with you anything about this case until you are excused or, if you are a juror, until the trial concludes.

This means, among other things, that you may not speak to any member of the news media about this case. There is legitimate public interest in this matter and the news media may play a vital role in informing the public about it. It would, however, be improper for you to discuss this case, or your role in it, with them.

If anyone should ask to speak to you about the case, you should politely decline. If anyone persists, please inform the jury clerk or my deputy clerk promptly.

I also instruct you not to read, watch, or listen to any reports about this case in the media until you are either excused, or if you are selected as a juror, until the case concludes. If you should by chance encounter a news story in the newspaper, on the radio, on television, or on the internet, please just turn the page, change the channel, or close the screen. Do not read, listen to or watch anything related to this case. And do not under any circumstances do any on-line research about this case, or about anything or anyone who may be connected to this case. This includes Googling or otherwise researching the defendant, any of the witnesses or events involved, or any of the trial participants such as the lawyers or the judge. Likewise, you must not communicate about this case, or allow anyone to communicate about it with you, by telephone, text-messaging, Skype, or email, or via social media such as Twitter or Facebook. In addition, please do not discuss this case or anything I have just said with any of the other potential jurors or anyone else here today.

Just take the time necessary to respond to the questionnaire thoughtfully, honestly and completely. Remember that there are no right or wrong answers to any of the questions. Please write or print clearly. Do not fill out the section marked Juror Number; the court staff will fill it out for you. If you cannot answer a question because you do not understand it, write "Do not understand." If you cannot answer because you do not know the answer, write "Do not know." If you want to explain your answer, do so either in the space provided on the questionnaire, or on one of the sheets attached to the questionnaire. If you use one of the blank sheets, please write the number of the question you are answering.

Please fill out the entire questionnaire. If you would prefer to answer a sensitive question orally rather than in writing, you may write "Private" in response to that question.

Because your answers are part of this vital jury selection process, your answers must be truthful and signed under the penalty of perjury at the end of the questionnaire. When you have completed and signed the questionnaire, you should give it to a member of the court staff. You then may leave, and call in on, January \_\_\_\_, after 5:00 p.m., for further instructions.

Let me conclude as I began, by thanking you for being here this morning and for taking part in this important process. We will now distribute the questionnaires.



**JOINT REQUESTED PRELIMINARY INSTRUCTIONS CONCERNING  
VOIR DIRE AND JURY SELECTION**

Good morning, ladies and gentlemen. I want to welcome you back to the United States District Court for the District of Massachusetts, and to thank you again for coming here today.

We are in the process of selecting a jury for the case of *United States v. Dzhokhar Tsarnaev*. As many of you are aware, and as I told you when you filled out your questionnaires, Mr. Tsarnaev is charged in connection with a bombing that occurred near the finish line of the Boston Marathon on April 15, 2013, and that resulted in the deaths of three people. Mr. Tsarnaev is also charged in the death of an MIT police officer three days later, and with additional crimes that occurred in Cambridge, Boston and Watertown on the night of April 18-19, 2013. We are selecting a jury to hear evidence and decide whether the government has proved Mr. Tsarnaev's guilt on each of the charges against him, and, if he is convicted of any of the capital charges, whether he will be sentenced to death or to life in prison without possibility of release.

Some of you may wonder why the death penalty could be a possibility in this case in view of the fact that the laws of Massachusetts do not provide the death penalty for murder or any other violation of Massachusetts law. The reason is that this is a federal case, involving violations of the laws of the United States, rather than a state case, involving violations of the laws of Massachusetts. If the jury convicts Mr. Tsarnaev of any one of the capital crimes charged in the indictment, the same jury will hear additional evidence, and then decide whether to sentence him to death or to life in prison without

possibility of release. Because the jury that is selected to decide the defendant's guilt or innocence will also decide his punishment if he is convicted, it is necessary to question you about your feelings and beliefs about the death penalty as part of the process of picking a jury.

To help the jury determine whether to impose the death penalty, the government will introduce evidence that seeks to prove beyond a reasonable doubt (1) that Mr. Tsarnaev acted with sufficient intent to be subject to the death penalty, and (2) that "aggravating factors" about the killings or the defendant justify sentencing him to death. Aggravating factors are circumstances that, if proven, make the killings particularly serious or blameworthy, and therefore, under the law, may justify imposing a more severe sentence on Mr. Tsarnaev compared to others convicted of murder. The government will bear the burden of proving alleged aggravating factors to every juror beyond a reasonable doubt.

Mr. Tsarnaev will then have the opportunity to introduce information concerning what are referred to as "mitigating factors." Mitigating factors are usually circumstances about the crime or about Mr. Tsarnaev's background or character that would suggest that the death penalty is not the appropriate sentence in this case, or that life imprisonment without possibility of release is adequate to punish the defendant. A mitigating factor must only be proven by a preponderance of the evidence. That is a lower standard of proof than proof beyond a reasonable doubt. Mitigating factors also do not have to be proven to the satisfaction of all 12 jurors. Any juror who finds a mitigating factor to have been proven by a preponderance of the evidence may consider that factor in deciding the

appropriate sentence in this case, regardless of whether any or all of the other jurors agree that the mitigating factor has been proven .

Before a jury could vote to impose the death penalty, every juror would have to be persuaded that certain “threshold” factors that make Mr. Tsarnaev potentially subject to the death penalty had been proven beyond a reasonable doubt. In addition, in order to impose the death penalty, every juror would have to be persuaded that any proven aggravating factors sufficiently outweigh any mitigating factors that one or more jurors found existed to justify a sentence of death. Even if the jury did not find any mitigating factors in this case, it would still have to be unanimously persuaded that any proven aggravating factors were themselves sufficient to justify a death sentence.

You should understand that a jury is never required to find that a sentence of death is justified. The decision whether the government has proven that a defendant should be sentenced to death must ultimately be made by each juror himself or herself. If, however, every juror is persuaded that the death penalty should be imposed, I would be required, as the judge, to sentence the defendant to death. In other words, I could not change the jury’s decision. The jury — and not the judge — is responsible for determining whether a defendant who is convicted of a capital crime will live or die.

What I have just described is only an overview of the law applicable to a jury’s consideration of the death penalty. If you are selected to serve on the jury, and if you find the defendant guilty of a crime or crimes punishable by death, I will give you very detailed instructions concerning your duties in deciding whether to impose the death

penalty or life imprisonment without possibility of release, and the law that must be followed in making that decision.

As I told you before you filled out your questionnaire, there are no right or wrong answers to any of the questions that you have been asked, or that you will be asked in this process. We are asking them primarily because both the government and Mr. Tsarnaev are entitled to a jury that does not have its mind made up, one way or another, concerning whether Mr. Tsarnaev is guilty or not guilty, and — assuming he is convicted — whether he should be sentenced to death or to life in prison without possibility of release before hearing the evidence and a detailed explanation of the law.

During the course of the day, each of you will be questioned about issues that are relevant to selecting a jury in this case. We do not expect or want any particular answer to my questions. All we want, and what the law expects, is that you provide accurate and truthful answers to every question. If you do that, you will be doing your duty as a citizen and as a juror — no matter what your answers may be.