

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

GOVERNMENT’S OPPOSITION TO DEFENDANT’S
RENEWED MOTION FOR HEARING TO ADDRESS “LEAKS”

The United States of America, by and through its undersigned counsel, respectfully opposes defendant Dzhokhar Tsarnaev’s third motion for a hearing to address law enforcement “leaks.”

ARGUMENT

Tsarnaev begins his motion with the erroneous assertion that there has been “a pattern of leaks of information by law enforcement.” (Deft. Mot. at 1). On the contrary, as the government demonstrated in its oppositions to Tsarnaev’s first two “leaks” motions, virtually all of the alleged “leaks” he has complained of fall into one of four categories: information that was public to begin with (e.g., photos given to the press by eyewitnesses); information created by the producers of television programs for dramatic effect; information that was released by the government in the days immediately following the bombings for legitimate public safety purposes; or comments by law enforcement officials about this case. See Govt. Opp. to First “Leaks” Motion [Dkt. 312] at 1. The government has repeatedly reminded law enforcement agents involved in the case to avoid

disclosing non-public information or making improper comments. Considering the large number of law enforcement agents involved in the case and the large amount of evidence they have collected, those reminders appear largely to have been effective.

Tsarnaev's latest motion seeks relief based primarily on two passages from an October 16, 2014, Newsweek article:

- "Multiple law enforcement sources tell *Newsweek* that [Katherine] Russell is part of an ongoing Boston Marathon investigation. 'She remains in the web of suspicion' says one high ranking government official, and has been under surveillance since the blasts."
- "'Junes [Umarov] and Dzhokhar are best friends,' a high-ranking law enforcement source involved in the investigation says. 'They exchanged questionable, public messages that could be interpreted as referring to the Boston Marathon bombing.'"

Once again, even assuming that these statements were actually made by law enforcement officials, they do not constitute "leaks" of non-public information are not prejudicial. Ms. Russell's lawyer has repeatedly told the press that she is part of an ongoing Boston Marathon investigation, see, e.g., <http://www.providencejournal.com/breaking-news/content/20140418-questions-persist-about-what-if-anything-katherine-russell-knew.ece>. Although the government does not confirm or deny this information, the information is something any "law enforcement source" or "government official" could confidently tell Newsweek just from reading the newspaper. The article does not even attribute the quote about Ms. Russell to

a law enforcement officer participating in the Marathon bombing investigation, and there is no reason to believe it came from one.

Similarly, Mr. Umarov has been outspoken about his close friendship with Tsarnaev. See, e.g., <http://www.nytimes.com/2013/05/05/us/dzhokhar-tsarnaevs-dark-side-carefully-masked.html?pagewanted=all&r=0>. His Twitter messages with Tsarnaev (made using the screen name "XxjungaxX") were public to begin with, and many interested observers have long speculated that some of the messages refer to the Boston Marathon bombings. See, e.g., http://www.netadvisor.org/wp-content/uploads/2013/04/J_tsar-Dzhokar_Tsarnaev-FullTwitterAccount81pps1.pdf; <http://www.jesterscourt.cc/2013/04/23/boston-marathon-bombing-just-a-hunch>. Although no "law enforcement source involved in the investigation" should be commenting on the evidence at all, the comment quoted in the Newsweek article about Umarov's "tweets" -- assuming it was in fact made by a law enforcement source involved in the investigation -- is merely a comment, not a "leak" of non-public information.

The remainder of Tsarnaev's motion quotes alleged statements from law enforcement officers that either have already been addressed in previous motions, date back nearly 18 months, or have little or nothing to do with his case.

Stripped to its essentials, Tsarnaev's motion relates to two alleged comments by law enforcement officers that merely repeat

information that was public to begin with and has already been widely publicized. Although the government deplors any public comments about this case by law enforcement officials associated with the investigation, the comments in the Newsweek article -- to the extent they are even attributed to law enforcement officials associated with the investigation -- are relatively innocuous, nonprejudicial, and do not warrant a hearing or any other relief.

CONCLUSION

WHEREFORE, the government respectfully requests that the Court deny Tsarnaev's third motion for a hearing to address law enforcement "leaks."

Respectfully submitted,

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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 that paper copies will be sent to those indicated as non-registered participants on this date.

/s/ William D. Weinreb

WILLIAM D. WEINREB