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/s/ William W. Fick



ISIS. This media saturation can only be expected to intensify as we approach the start of trial and, then, the anniversary of the Marathon bombing.

Second, even the government, itself, now takes the position, by way of its own expert disclosures, that the crimes charged inflicted actual injury on the entire local population, especially children. Greater Boston was, itself, a victim. That is what places this case on all fours with *United States v. McVeigh*, 918 F. Supp. 1467 (W. D. Okla. 1996). The likely reason *McVeigh* hasn't been cited by other courts in orders changing venue is that no case before this one has come close to the same level of impact on an entire community. Whether or not *McVeigh* technically counts as "precedent," Opp. at 3, the Constitution plainly compelled a change of venue, a reality which the parties and the Court wisely understood and accepted.<sup>1</sup>

The government attacks the entire body of social science research underlying the "story model" with Supreme Court cases finding, in different circumstances based on individual factual records, that passage of time between adverse publicity and trial softens the effects of publicity. Opp. at 2-3. Here, in contrast, the record shows that intense publicity is unabating. Absent a substantial continuance there simply is no gap in time to "soften" adverse effects.

Regarding the efficacy of voir dire, the government urges the Court to ignore the First Circuit's powerful language in *United States v. Delaney*, 199 F.2d 107 (1st Cir. 1952), and to be guided instead by the experience of other recent high-profile trials, and

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<sup>1</sup> Notably, the government contended that the trial could proceed elsewhere in Oklahoma but the Court disagreed and transferred the trial to Denver. See *McVeigh*, 918 F. Supp. At 1474.

by boilerplate language in other cases that “juries follow instructions.” Opp. at 3-4.

*Delaney* remains good law, however, and none of the recent trials, despite their notoriety, comes close to this one in attention and impact.

**Conclusion**

For the foregoing reasons, as well as those set forth in prior filings, the Court should grant Mr. Tasarnaev’s motion and order a change of venue to an appropriate location outside the District of Massachusetts. The Court should hold a hearing on this motion, and to determine the district of transfer.

Respectfully submitted,

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by his attorneys

/s/ William W. Fick

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