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VIA ECF

Hon. Vernon S. Broderick
United States District Court
40 Foley Square
New York, NY 10007

Re: United States v. Sayfullo Saipov
17 Cr. 722 (VSB)

Dear Judge Broderick:

We write to further explain the defense position with respect to the production of discovery and the scheduling in this matter.

The Government has provided us with six productions of discovery, the most recent of which was provided on Friday. The discovery is voluminous and totals more than a terabyte. It includes 981 audio files and over 1,800 video files. The vast majority of audio, video, and text files are in foreign languages, including Uzbek and Arabic, requiring extremely time-consuming translation.

Given the volume of discovery and the difficulties inherent in an overseas mitigation investigation, we requested a date in May for the defense mitigation submission to the Government.¹ As set forth in its letter, the Government has agreed to this proposal.

The Government suggested a defense motion deadline of 30 days after the Government makes its capital authorization decision, which it anticipates making by no later than September 1, 2018. We believe that a firm deadline of October 1 would be preferable so that we may have some certainty as to our submission date. If, for instance, the Government makes its authorization decision well in advance of September 1, we may not be in a position to file within 30 days. The substance of the defense motions will be dramatically different depending on the

¹ This is an extremely aggressive schedule for a mitigation presentation. According to the Federal Death Penalty Resource Project, the average time from indictment to capital mitigation presentation is 12.7 months. Our proposed May date is approximately 6 months from indictment in this case.

Honorable Vernon S. Broderick
United States District Judge
Southern District of New York

January 17, 2018
Page 2

Re: United States v. Sayfullo Saipov
17 Cr 722 (VSB)

Government's decision whether to seek the death penalty (indeed, if the Government does not seek the death penalty, the defense would likely file no motions). For this reason, we ask the Court to set October 1, 2018 as the deadline for defense motions (other than *in limine* trial motions); November 1 as the date for the Government response; and November 15 for the defense reply.

Lastly, we believe it is premature to set a trial date at this time. The length and type of trial in this case, and whether there will be a trial at all, will depend greatly on whether the government seeks the death penalty and how the Court rules on our pretrial motions, especially those regarding any capital charges. If the Government chooses to seek the death penalty, the voir dire process will likely last at least a month in order to select a "death-qualified" jury (in many capital cases, voir dire lasts longer than a month). In addition, the combined merits and penalty phases of the trial would likely last several months.

If the Court chooses instead to set a trial date now, we ask that it be no earlier than September 2019. A trial date less than two years after indictment in a capital case involving a large volume of discovery and extensive mitigation work halfway around the world, is a very fast schedule. In addition, setting a date in the spring for a trial that will last well into the summer, will pose even greater difficulty in picking a jury, given jurors' likely vacation schedules.

The Government expresses concern about the victims' and the public's need for closure in this case, but the most straightforward way to achieve closure would be for the Government to accept a plea of guilty and a sentence of life imprisonment without the possibility of parole. That outcome would obviate the need for the victims' families to prepare for and participate in a trial and prevent years of appeals and other post-conviction litigation as required by the Constitution in the event of a death sentence. In short, a decision by the Government not to seek the death penalty would bring immediate closure to the case without the need for the public and victims to repeatedly relive the terrible events of October 31, 2017. We hope to convince the Government of that view in our submissions.

Honorable Vernon S. Broderick
United States District Judge
Southern District of New York

January 17, 2018
Page 3

Re: United States v. Sayfullo Saipov
17 Cr 722 (VSB)

In sum, we respectfully ask the Court to (1) adopt the May deadline for the defense mitigation submission to the Government; (2) set a motions deadline for October 1, 2018; and (3) wait until after the death penalty authorization process and motions practice is complete to set a trial date, or in the alternative, to set a trial date no earlier than September 2019.

Respectfully submitted,



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