

MUNGER, TOLLES & OLSON LLP

RONALD L. OLSON
ROBERT E. DENHAM
JEFFREY I. WEINBERGER
CARY B. LERMAN
GREGORY P. STONE
BRAD D. BRIAN
BRADLEY S. PHILLIPS
GEORGE M. GARVEY
WILLIAM D. TEMKO
JOHN W. SPIEGEL
DONALD B. VERRILLI, JR.*
TERRY E. SANCHEZ
STEVEN M. FERRY
MARK B. HELM
JOSEPH D. LEE
MICHAEL R. DOYEN
MICHAEL E. SOLOFF
KATHLEEN M. McDOWELL
GLENN D. POMERANTZ
THOMAS B. WALPER
HENRY WEISSMANN
KEVIN S. ALLRED
JEFFREY A. HEINTZ
JUDITH T. KITANO
GARTH T. VINCENT
TED DANE
STUART N. SENATOR
MARTIN D. BERN
ROBERT L. DELL ANGELO
BRUCE A. ABBOTT
JONATHAN E. ALTMAN
KELLY M. KLAUS
DAVID B. GOLDMAN
DAVID H. FRY
LISA J. DEMSKY
MALCOLM A. HEINICKE
TAMERLIN J. GODLEY
JAMES C. RUITEN
RICHARD ST. JOHN
ROHIT K. SINGLA
LUIS LI
CAROLYN HOECKER LUEDTKE
C. DAVID LEE
MARK H. KIM
BRETT J. RODDA*
FRED A. ROWLEY, JR.
KATHERINE M. FORSTER
BLANCA FROMM YOUNG
ROSEMARIE T. RING
MELINDA EADES LEMOINE
SETH GOLDMAN

GRANT A. DAVIS-DENNY
JONATHAN H. BLAVIN
DANIEL B. LEVIN
MIRIAM KIM
MISTY M. SANFORD
HAILYN J. CHEN
BETHANY W. KRISTOVICH
JACOB S. KREILKAMP
JEFFREY Y. WU
LAURA D. SMOLOWE
ANJAN CHOUDHURY
KYLE W. MACH
HEATHER E. TAKAHASHI
ERIN J. COX
BENJAMIN J. HORWICH
E. MARTIN ESTRADA
MATTHEW A. MACDONALD
BRYAN H. HECKENLIVELY
ELAINE J. GOLDENBERG*
MARK R. YOHALEM
GINGER D. ANDERS*
MARGARET G. MARASCHINO
JOHN M. GILDERSLEEVE
ADAM B. WEISS
GEORGE CLAYTON FATHEREE, III
KELLY L. C. KRIEBS
JEREMY A. LAWRENCE
LAURA K. LIN
ACHYUT J. PHADKE
ZACHARY M. BRIERS
JENNIFER M. BRODER
KURUVILLA J. OLASA
JUSTIN P. RAPHAEL
ROSE LEDA EHLE
ERIC P. TUTTLE
JOHN W. BERRY
ROBYN K. BACON
JORDAN D. SEGALL
DAVID S. HONG
JONATHAN KRAVIS*
WESLEY T. L. BURRELL
KAREN A. LORANG
CRAIG JENNINGS LAVOIE
ADAM P. BARRY
JENNIFER L. BRYANT
ANDREW CATH RUBENSTEIN
NICHOLAS D. FRAM
JOHN L. SCHWAB
ASHLEY D. KAPLAN

601 MASSACHUSETTS AVE. NW
SUITE 500E
WASHINGTON, D.C. 20001-5369
TELEPHONE (202) 220-1100
FACSIMILE (202) 220-2300

350 SOUTH GRAND AVENUE
FIFTIETH FLOOR
LOS ANGELES, CALIFORNIA 90071-3426
TELEPHONE (213) 683-9100
FACSIMILE (213) 683-3702

560 MISSION STREET
TWENTY-SEVENTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105-3089
TELEPHONE (415) 512-4000
FACSIMILE (415) 512-4077

November 23, 2020

JESSICA REICH BARIL
JULIANA M. YEE
JEREMY K. BEECHER
MATTHEW K. DONOHUE
EMILY CURRAN-HUBERTY
JORDAN X. NAVARRETTE
JOHN B. MAJOR
LAUREN C. BARNETT
C. HUNTER HAYES
TREVOR N. TEMPLETON
SKYLAR B. GROVE
ELIZABETH R. DYER
SARAH S. LEE
LAURA M. LOPEZ
MICHAEL C. BAKER
ADELE M. EL-KHOURI*
COLIN A. DEVINE
DANE P. SHIKMAN
LEXI PEACOCK
MAGGIE THOMPSON
SAMUEL H. ALLEN
ALLISON M. DAY
JONATHAN S. MELTZER*
LAUREN M. HARDING
NEFI D. ACOSTA
STEPHANIE G. HERRERA
TERESA REED DIPPO
DANIEL BENYAMIN
SARA A. MCDERMOTT
J. MAX ROSEN
RACHEL G. MILLER-ZIEGLER*
ALISON F. KAROL SIGURDSSON
ANNE K. GONLEY
KATHERINE G. INCANTALUPO
DAVID P. THORESON
NICHOLAS M. AXELROD
DAVID W. MORESHEAD
ANDRE W. BREWSTER III
TERRA D. LAUGHTON
ROWLEY J. RICE
JEREMY S. KREISBERG*
JOHN D. MAHER
GINA F. ELLIOTT
BRANDON R. TEACHOUT
SEGUN I. BABATUNDE II
CARSON C. ZHENG
LUCAS J. ARTAIZ
USHA CHILUKURI VANCE

BRIAN J. SPRINGER
TYLER HILTON
VINCENT LING
ALEXANDER S. GORIN
BRENDAN GANTS*
MARKUS BRAZILL
MARI T. SAIGAL
LAUREN E. ROSS*
ZOE BEDELL*
BENJAMIN G. BAROKH
ABE DYK
MICHELE C. NIELSEN
APRIL YOUSEF-ROLL
COBUS VAN DER VEN*
MARIANNA MAO
MEGAN MCCREADIE
OMAR H. NOURELDIN
STEPHEN HYLAS
ARIEL TESHUVA
SHANNON GALVIN AMINIRAD
LLOYD MARSHALL
NATALIE KARL
ANDREW LEWIS
BRANDON MARTINEZ
ANTHONY J. RAMIREZ
ANDREW LEWIS
CARRIE C. LITTE
BEAU C. TREMITIERE
ESTALYN S. MARQUIS
JAMES R. SALZMANN
ELIZABETH DOUGLAS
SAMIR HALAWI
ROBIN S. GRAY

OF COUNSEL
ROBERT K. JOHNSON
PATRICK J. CAFFERTY, JR.
PETER A. DETRE
BRAD SCHNEIDER
PETER E. GRATZINGER
JENNY H. HONG
KIMBERLY A. CHI
ADAM R. LAWTON
MATTHEW S. SCHONHOLZ
MICHAEL E. GREANEY

E. LEROY TOLLES
(1922-2008)

*ADMITTED IN DC.
ALL OTHERS ADMITTED IN CA

Writer's Direct Contact
(202) 220-1107
(213) 683-5112 FAX
Ginger.Anders@mtol.com

Scott S. Harris
Clerk of the Court
Supreme Court of the United States
One First Street N.E.
Washington, D.C. 20543

Re: *United States v. Tsarnaev*, No. 20-443

Dear Mr. Harris:

I am writing on behalf of respondent in the above-referenced case to request an extension of time of 30 days, to and including Wednesday, January 6, 2021, for the filing of a brief in opposition to the petition for a writ of certiorari. Absent an extension, the brief would be due on Monday, December 7, 2020. This is the second extension respondent has sought. Petitioner opposes this request. To accommodate the government's stated interest in avoiding further delay, respondent will not seek any subsequent extension if this one is granted.

The extension is necessary because of the press of other matters with proximate due dates. Counsel of record, Ginger Anders, has commitments that include: (1) briefs in opposition in *Republican Party of Pennsylvania v. Boockvar*, No. 20-542, and *Scarnati v. Pennsylvania Democratic Party*, No. 20-574, due on November 25, 2020, and November 30, 2020, respectively; (2) a brief in opposition to certiorari on behalf of several financial institutions, due on November 27, 2020; (3) an amicus brief in support of petitioners in *United States v. Arthrex*, Nos. 19-1434, 19-1452, 19-1458, due on December 2, 2020; (4) a reply in support of certiorari in *Johnson v. Precythe*, No. 20-287 (capital case), due on November 23, 2020; and (5) a reply in

November 23, 2020

Page 2

support of a motion to dismiss in *Ambac Assurance Co. v. Financial Oversight and Management Board for Puerto Rico*, Adv. Proc. No. 20-00068-LTS (No. 17 BK 3283-LTS) (D.P.R.), due on November 23, 2020. In addition, in *In the Matter of the Federal Bureau of Prisons' Execution Protocol Cases*, No. 19-mc-145 (D.D.C.), Ms. Anders is lead counsel to Brandon Bernard, a federal death row inmate whose execution is scheduled for December 10, 2020. Extensive litigation is expected in that case between now and December 10.

In addition, Deirdre von Dornum has had numerous other commitments this month, including serving as lead counsel for the defense in *United States v. Alonzo Shipp*, 19 Cr. 29 (RPK) (E.D.N.Y.). She was in trial from November 9 through November 18, after extensive motion practice beginning in early October. Daniel Habib's commitments include a reply brief in *United States v. Graham*, No. 20-888 (2d Cir.), due on December 4, 2020. In addition, since September, Mr. Habib has been responsible for assisting his young daughter, who is enrolled in the New York City public school system, with full-time remote learning due to COVID-19.

The government's opposition to this second 30-day extension is evidently based on its preference that the petition be conferenced in time for this Court, should it grant review, to hear and decide the case this Term. 20-443 Pet. 33. It is true that granting this extension would push the filing of the opposition past the December cut-off date, such that if the Court were to grant certiorari, its decision on the merits might be issued approximately six months later than if the extension were not granted.

The government, however, has not identified any concrete interest that would be prejudiced by that brief delay. The First Circuit's decision does not create any uncertainty about respondent's guilt or the fact that he will remain in prison for the rest of his life: although the First Circuit vacated respondent's death sentence, it also affirmed 27 of his 30 convictions and the life sentences associated with them. To the extent that the government is concerned that proceedings in this Court will delay any new penalty trial—the government observes that a new sentencing proceeding “would be at least eight years removed from the events,” Pet. 32-33—the additional months in question are a small part of the total time that has elapsed since the offenses, which occurred in 2013. The vast majority of that time is attributable to the normal course of trial and appellate proceedings. It is difficult to see how six months would make an appreciable difference with respect to the availability of evidence or witness memories. If the government had significant concerns about the effect of another few months on its ability to obtain a death sentence in any retrial, it could have proceeded directly to that retrial, rather than seeking certiorari. The government also could have moved to expedite the certiorari briefing, but it did not do so.

The government's insistence on haste is particularly unwarranted in this case. Appellate proceedings in this extremely complex case took over four years, and involved over 1000 pages of briefing and 50,000 pages of appendices. Counsel of record joined respondent's legal team at the certiorari stage, and has required substantial time to familiarize herself with the record.

November 23, 2020
Page 3

Preparing an opposition to certiorari in a capital case, particularly one with such an extensive record, is a substantial endeavor. Indeed, when the government is in the position of opposing certiorari in capital cases on direct review, it often seeks multiple extensions. That practice underscores the care and attention required to prepare a brief in opposition in a capital case.

Respondent therefore respectfully requests a 30-day extension of time in which to file his brief in opposition. To accommodate the government's stated interest in avoiding further delay, respondent will not seek any subsequent extension.

Thank you very much for your time and assistance on this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Ginger Anders". The signature is fluid and cursive, with the first name "Ginger" being more prominent than the last name "Anders".

Ginger D. Anders

cc: All counsel

Jeffrey B. Wall
Acting Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Deirdre D. von Dornum
Daniel Habib
Federal Defenders of New York, Inc.
52 Duane Street, 10th Floor
New York, NY 10007