

**APPENDIX TO THIS AMICUS CURIAE BRIEF,  
to wit:**

Pro se argument of Maret Tsarnaeva as amicus  
curiae before the United States District Court  
for Massachusetts in behalf of her nephew  
Dzhokhar Tsarnaev on May 15, 2015,  
including color photo exhibits marked and  
offered as Tsarnaeva exhibits 1, 2, 3 and 4:

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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United States of America,  
Plaintiff

ARGUMENT OF  
AMICUS CURIAE

vs.

No. 13-CR-10200-GAO

Dzhokhar Tsarnaev,  
Defendant

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**MAY IT PLEASE THE COURT:**

**1. Federal jurisdiction:** The constitutional authority of the United States cannot be extended to the prosecution of Dzhokhar Tsarnaev in light of the opinion of the court in *United States v. Lopez*, 514 U. S. 549 (1995), and views of Alexander Hamilton in *The Federalist*, Ns. 17, 22, and 34 [Clinton Rossiter (ed.), Mentor edition by New American Library, New York, 1961, pp. 118, 143-144, and 209]. Congress has broad power to regulate commerce, including trade and the incidents of trade, but domestic crimes and use of weapons are generally reserved to the States. If there is sufficient evidence to prosecute Dzhokhar for murder and mayhem, he should and can be prosecuted exclusively by the Commonwealth of Massachusetts. Accordingly, amicus urges that the indictment now pending should be dismissed, and the conviction of her nephew Dzhokhar Tsarnaev of charges under several acts of Congress should be vacated.

**2. The actual innocence of the accused:**

Laying aside misgivings of amicus and many others about of the “official” scenario concerning this case, as broadcast to the world by the government and mainstream news media of the United States, **evidence generated by the Federal Bureau of Investigation (FBI), confirmed on the judicial record of this cause, and clarified by the indictment, or suitable for judicial notice under Rule 201(b) of the Federal Rules of Evidence, conclusively proves that Dzhokhar Tsarnaev cannot be guilty of the crimes charged in this prosecution. .**

The formal indictment against Dzhokhar Tsarnaev was returned on June 27, 2013. The document is 74 pages long, and accuses Mr. Tsarnaev (hereinafter called Dzhokhar) of heinous crimes, including many counts punishable by death. The central event for which Dzhokhar is alleged to have been responsible, according to the indictment, took place on Boylston Street, in front of the Forum Restaurant, near the finish line of the Boston marathon on April 15, 2013. The most important paragraphs of the indictment are numbered 6, 7, and 24 (including several other paragraphs repeating expressly or by implication the substance thereof). Paragraphs 6-7, read in themselves and in context, state that, acting in concert with his (now deceased) brother, Dzhokhar set down on the sidewalk and detonated one of two “**black backpacks**” which contained “**improvised explosive devices**,” these “**constructed from pressure cookers, low explosive power, shrapnel, adhesive, and other**

**materials.”** Paragraph 24 clarifies that the black backpack carried, and containing **the pressure-cooker bomb allegedly detonated by Dzhokhar,** was placed in front of the Forum Restaurant and **was associated with the second explosion.** The indictment says in paragraph 6 that both bombs exploded at about 2:49 in the afternoon (Eastern time), and that the bombs Dzhokhar and his brother placed and detonated each killed at least one person, and wounded scores of others.

On the morning after the explosions, i. e., on April 16, 2013, Richard DesLauriers, special agent in charge of the FBI in Boston, made a public statement at a press conference, which is published in printed form on the FBI website and in the news media concerning the facts later set forth in the indictment. Mr. DesLauriers said, as paragraphs 6-7 of the indictment substantially confirm,

“ . . . this morning, it was determined that both of the explosives were placed in a **dark-colored nylon bag or backpack.** The bag would have been heavy, because of the components believed to be in it.

“ . . . we are asking that the public remain alert, and to alert us to the following activity . . . someone who appeared to be carrying an **unusually heavy bag** yesterday around the time of the blasts and in the vicinity of the blasts.”

The FBI also published on April 16, 2013, a crime lab photo of **a bomb fragment** found after the

App. 4

explosions. This photo is reproduced as **Tsarnaeva exhibit 1** in the appendix hereof, and is believed proper for judicial notice.

From this bomb fragment, the FBI crime lab was able to reconstruct the **size, shape, and type of pressure cookers**, as was reported on information published by the FBI to the nation on ABC News Nightline on April 16, 2013. A still-frame, taken from (about 01:39-01:54) of this ABC television report, is reproduced as **Tsarnaeva exhibit 2** in the appendix hereof, and is offered for judicial notice. A larger segment of this ABC Nightline News report (at about 01:31-02:14) elaborates facts set forth in paragraphs 6-7 of the indictment, including reference to three of the four exhibits reproduced in the appendix hereof. Each of the pressure cookers in question was a Fagor, 6-quart model, marketed in or near Boston and elsewhere in the United States by Macey's. Its external dimensions are probably about 8½ inches in height, including cover, and about 9 inches in diameter. Stripped of hard plastic handles and filled with nails, bee bees, and other such metal, then prepared as a bomb, it would cause a bag carrying it to be, as observed by the FBI chief in Boston during his press conference on April 16, 2013, "unusually heavy."

Again on April 16, 2013, the FBI published a crime lab photo, here reproduced as **Tsarnaeva exhibit 3** in the appendix hereof, and showing a **blown-out backpack which is said to have contained one of the bombs, - a black nylon bag with a characteristic white rectangle marking** about 3 by 1½ inches more

## App. 5

or less as it appeared following the explosions the day before. This photo pictures the “dark colored nylon bag or backpack” which Mr. DesLauriers described in his press conference on the day after the explosions when he described what was carried by the guilty parties. It was one of the “black backpacks” referenced in paragraph 7 of the indictment. It is pictured in prosecution exhibit 26 which was introduced on the second day of the trial in this cause (day 28 on the transcript, March 5, 2015), showing that the bag or backpack in question was found on the street near the post box in front of the Forum Restaurant on Boylston Street, and, as previously noted, was associated with the second explosion on April 15, 2013, which, in paragraph 24 of the indictment, Dzhokhar is alleged to have detonated. This general impression is confirmed by defense exhibit 3090, showing a backpack with black exterior or covering, and introduced on the sixteenth day of the trial (day 42 on the transcript, March 31, 2015). **Tsar-naeva exhibit 3** is also suitable for judicial notice.

On April 18, 2013, the FBI published a 29-second street video claimed to have been taken from Whiskey’s Steak House on Boylston Street at about 02:37-38 o’clock in the afternoon (Eastern time), only minutes before the explosions on April 15, 2013. It definitively settles the principal question raised by the indictment and the plea of not guilty interposed against it. Part of this video is tucked into prosecution exhibit 22 introduced on the third day of the trial in this cause (day 29 on the transcript, March 9, 2015). From this street video, three still-frame photos have

## App. 6

been extracted. Two of these still-frame photos were published by the FBI on April 18, 2013, on posters which were used to identify suspects. All three photos were published by CNN and the Associated Press on April 19, 2013. The third still-frame photo from this video is most telling, and is reproduced as **Tsarnaeva exhibit 4** in the appendix hereof. As already noted, **the FBI and the indictment have together affirmed that the culprits who detonated these explosions were carrying large, unusually heavy, black backpacks concealing pressure-cooker bombs; but, the third still-frame photo from the Whiskey's Steak House video reproduced as Tsarnaeva exhibit 4, and drawn from a street video already used by the FBI to identify the suspects and acknowledged by the government in this prosecution, shows unmistakably that, shortly before the explosions, Dzhokhar was carrying a small-size, white\* backpack over his right shoulder the same light in weight, not heavy laden, and displaying no sagging or bulging as would normally be evident if the bag identified contained a pressure-cooker bomb of the size and weight which the FBI has described.**

Dzhokhar is not guilty of carrying and detonating a pressure-cooker bomb, as charged in the indictment, as is literally as obvious as the difference between black and white. There were and remain other

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\* For all practical purposes and to the naked eye, the color is white, although technical computer analysis suggests a very whitish shade of gray.

suspects whose identities have been credibly suggested. See, e. g., Toni Cartalucci, *Land Destroyer Report*, April 19, 2013 (illustrated commentary entitled “Contractors’ Stood Near Bomb, Left Before Detonation.”). But here it is enough to reflect on the comment of Lord Acton that “**historic responsibility has to make up for the want of legal responsibility.**” – J. Rufus Fears, *Selected Writings of Lord Acton*, Liberty Fund, Indianapolis, 1985, Vol. 2, p. 383 (Letter to Mandell Creighton, April 5, 1887). Whatever is done in judicial proceedings, history will judge this case, as surely as history has judged other significant cases.

**3. The grievance of amicus:** It is impossible that federal prosecutors and counsel for the accused did not know of the exculpatory evidence which has just been identified and illustrated. Yet **federal prosecutors went head without probable cause, as if decisive evidence of actual innocence, impossible to ignore in a diligent study of this case, did not exist**, as is wholly unacceptable in light of *Brady v. Maryland*, 373 U. S. 83 at 86-87 (1963).

Moreover, in her opening statement at trial on March 4, 2015, as reflected in the fourth paragraph of the transcript of her comments, **court-appointed counsel for the accused forcefully insisted that Dzhokhar was guilty of capital felonies, as is positively disproved by evidence generated by the FBI, reinforced by the indictment itself.** She said,

“The government and the defense will agree about many things that happened during the



week of April 15th, 2013. On Marathon Monday, Tamerlan Tsarnaev walked down Boylston Street with a backpack on his back, carrying a pressure cooker bomb, and put it down in front of Marathon Sports near the finish line of the Marathon. Jahar [i. e., Dzhokhar] Tsarnaev walked down Boylston Street with a backpack on his back carrying a pressure cooker bomb and placed it next to a tree in front of the Forum Restaurant. The explosions extinguished three lives.”

And in her summation to the jury on April 6, 2015, as the transcript shows, **court-appointed counsel for the accused said nothing of the exculpatory evidence in this case. She did not even ask for a verdict of not guilty.** She could hardly have done more to promote a conviction and the severest sentence possible, even though the third still-frame photo from the video at Whiskey’s Steak House, reproduced as **Tsarnaeva exhibit 4**, showed Dzhokhar carrying a **white backpack**, as alone was enough to defeat the indictment insofar as paragraph 7 thereof averred that the accused and his brother committed the principal acts of wrongdoing by carrying and setting down **black backpacks**. Such misconduct is altogether unacceptable in light of *Strickland v. Washington*, 446 U. S. 668 at 687-688 (1984).

The misconduct of which amicus complains served to conceal decisive exculpatory evidence by legerdemain. Amicus urges not only that the death penalty may not be imposed in this case, for all three opinions in *Herrera v. Collins*, 506 U. S. 390 (1993), allow that

the death penalty may not be constitutionally imposed where the accused is demonstrably innocent, but that sua sponte this court order a new trial with directions that new counsel for the accused be appointed, motivated to provide an authentic defense for Dzhokhar.

**4. The corpus delicti:** Paragraph 10 of the indictment recites a statement in the nature of a confession by Dzhokhar written on the inner walls of a boat in Watertown. But with respect to any and all evidence offered or treated as suggesting an extrajudicial admission of guilt in this case, amicus cites the penetrating observation by Sir William Blackstone in his *Commentaries on the Laws of England*, Edward Christian, London, 1765, Book IV, p. 357: “[E]ven in cases of felony at common law, [confessions] are the weakest and most suspicious of all testimony, ever liable to be obtained by artifice, false hopes, promises of favour, or menaces, seldom remembered accurately, or reported with due precision, and incapable in their nature of being disproved by other negative evidence.” Amicus and countless others suspect that the alleged confession in the boat was staged as artifice to suit the government’s case, and not authentic. But she stands on ancient wisdom which casts doubt on all extrajudicial confessions without adequate safeguards, including the rule that an extrajudicial confession is insufficient to convict, unless the corpus delicti be sufficiently proved up. The rule is defined with various degrees of rigor from jurisdiction to jurisdiction. In federal courts, in any event, the corroboration required to sustain a

confession or statement in the nature of a confession need only be independent, substantial, and reveal the words in question to be reasonably trustworthy, as appears, e. g., in *Opper v. United States*, 348 U. S. 84 (1954).

If such be the law here applicable, the required corroboration in this case must include evidence showing that Dzhokhar actually carried a large, heavy, black backpack on Boylston Street before the explosions on the afternoon on April 15, 2013, as claimed by the FBI and alleged in the indictment. **Tsarnaeva exhibit 4**, a product of investigation by the FBI, shows plainly that Dzhokhar did no such thing, hence no required corroboration has been established

**5. Closing remarks:** The views here expressed are not unique, but shared by good Americans, and others the world over. The undersigned and her sister Malkan are prepared to testify as expressed in the affidavit filed in support of the motion for leave to file a submission as amicus curiae. This argument is

Respectfully submitted,

Dated: May 15, 2015 /s/ Maret Tsarnaeva

[Russian script]

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App. 11

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**CERTIFICATE OF COMPLIANCE**

The undersigned certifies that this submission is consistent with the rules of this Court, that it is prepared in 14-point Times New Roman font, and that the bare text thereof consists of 2,331 words.

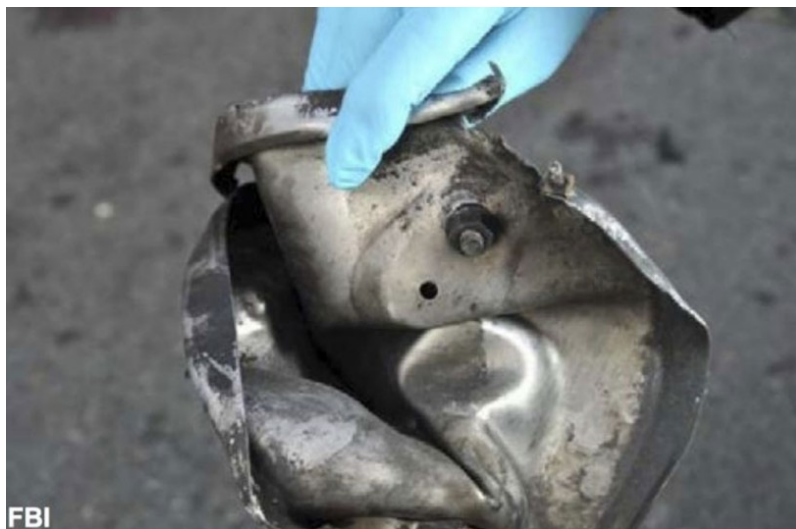
Dated: May 15, 2015 /s/ Maret Tsarnaeva

[Russian script]

Maret Tsarnaeva

App. 12

**APPENDIX  
TSARNAEVA EXHIBIT 1**



**TSARNAEVA EXHIBIT 2**



App. 13

**TSARNAEVA EXHIBIT 3**



FBI

**TSARNAEVA EXHIBIT 4**



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