means to vindicate its own authority without complete dependence on other Branches."); *accord Morrison v. Olson*, 487 U.S. 654, 681 & n.20 (1988).

To the contrary, Courts of Appeals have recognized that "[t]he judiciary's alleged 'inherent power' to appoint special prosecutors clashes with Article II, section 3 of the United States Constitution." *United States v. Davis*, 285 F.3d 378, 383 (5th Cir. 2002). And where that inherent power clashes, "a court may not exercise its 'supervisory power' in a way which encroaches on the prerogatives of the [Executive or the grand jury itself] unless there is a clear basis in fact and law for doing so." *In re Wood*, 833 F.2d 113, 115 (8th Cir. 1987) (internal quotation marks omitted); *see also In re Application for Appointment of Independent Counsel*, 596 F. Supp. 1465, 1470-72 (E.D.N.Y. 1984) (concluding that the constitutional separation of powers between the executive and the judicial branches, as well as the broad discretion traditionally vested in the prosecutor, prohibited the court from interfering with the prosecutorial function), *vacated on other grounds, sub nom. In re Appointment of Independent Counsel*, 766 F.2d 70 (2d Cir. 1985).[5]

Saipov has cited no precedent, and the Government is aware of none, in which a court has intervened in the exercise of the Executive's prosecutorial discretion in such a way. On the entirely speculative arguments that Saipov advances here, to do so would be a gross violation of the Court's constitutionally mandated role and of separation-of-powers principles. *See In re Grand Jury Subpoena of Rochon*, 873 F.2d 170, 176 (7th Cir. 1989) (disqualification of the Attorney General is a "drastic remedy" that should be undertaken only when "absolutely necessary"). Thus, the Court should not "examine the availability of alternative prosecution teams nor second-guess the

[5] In addition, courts in this Circuit have concluded that they may not direct the Attorney General to appoint a special prosecutor pursuant to DOJ guidelines because that is an inherently discretionary act not subject to a court's *mandamus* authority. *See United States v. Sessa*, 2011 WL 256330, at *60 (E.D.N.Y. 2011), *aff'd*, 711 F.3d 316 (2d Cir. 2013).

Government's reasons for proceeding as it did." *United States v. Troutman*, 814 F.2d 1428, 1438 (10th Cir. 1987) (rejecting a request similar to Saipov's).

Nor is an independent prosecutor required, as Saipov argues, to ensure the "appearance of impartiality." (Mot. at 8). The Supreme Court has made clear that the "rigid requirements" of judicial impartiality "are not applicable to those acting in a prosecutorial . . . capacity." *Jerrico, Inc.*, 446 U.S. at 248. The reason that "[p]rosecutors need not be entirely neutral and detached" is grounded in the adversary system that necessarily expects and permits them "to be zealous in their enforcement of the law." *Id.*; *see Wright v. United States*, 732 F.2d 1048, 1056 (2d Cir. 1984) ("True disinterest on the issue of such a defendant's guilt is the domain of the judge and the jury—not the prosecutor.").

CONCLUSION

For the reasons stated above, the Motion should be denied.

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Respectfully Submitted,

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