

**FILED**  
In Open Court  
USDC, Mass.  
Date 8/21/14  
By JACQUEE LAVETT  
Deputy Clerk



**U.S. Department of Justice**

*Carmen M. Ortiz*  
*United States Attorney*  
*District of Massachusetts*

Main Reception: (617) 748-3100

*John Joseph Moakley United States Courthouse*  
*1 Courthouse Way*  
*Suite 9200*  
*Boston, Massachusetts 02210*

August 20, 2014

Robert G. Stahl, Esq.  
220 Paul Street  
Westfield, NJ 07090

Re: United States v. Dias Kadyrbayev  
Criminal No. 13-10238-DPW

Dear Mr. Stahl:

This letter sets forth the Agreement between the United States Attorney for the District of Massachusetts (“the U.S. Attorney”) and your client, Dias Kadyrbayev (“Defendant”), in the above-referenced case. The Agreement is as follows:

1. Change of Plea

At the earliest practicable date, Defendant shall plead guilty to all counts in which he is named in the above-referenced Superseding Indictment, which charges Defendant with conspiracy to obstruct justice, in violation of 18 U.S.C. §371 (Count One); and obstruction of justice in violation of 18 U.S.C. §1519 (Count Two). Defendant expressly and unequivocally admits that he committed the crimes charged in the Superseding Indictment, did so knowingly, intentionally, and willfully, and is in fact guilty of those offenses. Defendant agrees to the accuracy of the attached statement of facts.

2. Penalties

Defendant faces the following maximum penalties: (a) for violation of 18 U.S.C. §371, incarceration for a period of five years; supervised release for a period of three years; a fine of \$250,000; and a mandatory special assessment of \$100; and (b) for violation of 18 U.S.C. §1519, incarceration for a period of 20 years; supervised release for a period of three years; a fine of \$250,000; and a mandatory special assessment of \$100.

Defendant also recognizes that pleading guilty may have consequences with respect to his

immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offenses to which Defendant is pleading guilty. As more fully set forth in Paragraph 6 below, Defendant agrees and stipulates to accept a final judicial order of deportation or removal knowing that it will result in his amenability to immediate deportation or removal from the United States upon conviction and completion of any period of incarceration.

3. Fed. R. Crim. P. 11(c)(1)(C) Plea

This plea agreement is made pursuant to Fed. R. Crim. P. 11(c)(1)(C), and Defendant's guilty plea will be tendered pursuant to that provision. In accordance with Rule 11(c)(1)(C), if the District Court ("Court") accepts this Agreement, the Court must include the agreed disposition in the judgment. If the Court rejects any aspect of this Agreement, the U.S. Attorney may deem the Agreement null and void. Defendant understands and acknowledges that he may not withdraw his plea of guilty unless the Court rejects this Agreement under Fed. R. Crim. P. 11(c)(5).

4. Sentencing Guidelines

The U.S. Attorney will take the following position at sentencing with regard to calculations under the United States Sentencing Guidelines ("USSG" or "Guidelines").

The U.S. Attorney will take the position that (1) in accordance with USSG §§2J1.2(c)(1), 2X.1.1(a); and 2X3.1(a)(1) and (3), Defendant's base offense level is 30, the maximum base offense level provided by §2X3.1(a)(3)(A), because the offense involved obstructing an investigation of crimes that include the use of weapons of mass destruction resulting in death for which the applicable base offense level is 43; (2) in accordance with USSG §3A1.4, Defendant's offense level is increased to level 42 and his criminal history category shall be Category VI, because the offenses of conviction are felonies that involved a federal crime of terrorism; and (3) in accordance with USSG §3E1.1, based on Defendant's prompt acceptance of personal responsibility for the offenses of conviction in this case, the adjusted offense level is reduced by three.

The U.S. Attorney's agreement that the disposition set forth below is appropriate in this case is based, in part, on Defendant's prompt acceptance of personal responsibility for the offenses of conviction in this case.

The U.S. Attorney may, at her sole option, be released from her commitments under this Agreement, including, but not limited to, her agreement that Paragraph 5 constitutes the appropriate disposition of this case, if at any time between Defendant's execution of this Agreement and sentencing, Defendant:

- (a) Fails to admit a complete factual basis for the plea;

- (b) Fails to truthfully admit Defendant's conduct in the offenses of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (d) Fails to provide truthful information about Defendant's financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (f) Engages in acts that form a basis for finding that Defendant has obstructed or impeded the administration of justice under USSG §3C1.1;
- (g) Intentionally fails to appear in Court or violates any condition of release;
- (h) Commits a crime;
- (i) Transfers any asset protected under any provision of this Agreement; or
- (j) Attempts to withdraw Defendant's guilty plea.

Nothing in this Agreement affects the U.S. Attorney's obligation to provide the Court and the U.S. Probation Office with accurate and complete information regarding this case.

5. Agreed Disposition

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the U.S. Attorney and Defendant agree that the following is a reasonable and appropriate disposition of this case:

- (a) incarceration for a period of not greater than seven years. The U.S. Attorney will recommend seven years' incarceration. The defendant may request a sentence of less than seven years;
- (b) a fine at the low end of the Guidelines sentencing range as calculated by the Court at sentencing, unless the Court finds that Defendant is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay a fine;
- (c) 36 months of supervised release; and
- (d) a mandatory special assessment of \$200.

Subject to the maximum sentence agreed to by the parties, the sentence to be imposed

upon Defendant is within the discretion of the Court, subject to the provisions of the advisory USSG and the factors set forth in 18 U.S.C. §3553(a).

6. Agreement Regarding Stipulated Judicial Order of Deportation or Removal

Defendant agrees he is not a citizen or national of the United States, and that he is a native of Kazakhstan.

Defendant agrees that when he is convicted in the instant criminal proceeding, he will be convicted in this Court for the offenses of conspiracy to obstruct justice, in violation of 18 U.S.C. §371, and obstruction of justice in violation of 18 U.S.C. §1519.

Defendant understands and knowingly waives his right to a hearing before an Immigration Judge, or before any other authority under the Immigration and Nationality Act, on the question of his deportability or removability from the United States. Defendant further concedes that he is removable under 8 U.S.C. §1227(a)(1)(C)(i) of the Immigration and Nationality Act, in that after admission as a nonimmigrant under 8 U.S.C. §1101(a)(15), Defendant failed to maintain or comply with the condition of the nonimmigrant status under which he was admitted. In this regard Defendant understands and knowingly waives his rights to examine the evidence against him, to present evidence on his own behalf, to cross-examine any witnesses presented by the government in any administrative removal proceeding, and to appeal from a determination of deportability or removability.

Defendant understands and knowingly waives his rights to any and all forms of relief or protection from removal, deportation, or exclusion under the INA, as amended, and related federal regulations. These rights include, but are not limited to, the ability to apply for the following forms of relief or protection from removal: asylum; withholding of removal under Title 8, United States Code, §1231(b)(3); any protection from removal pursuant to Article 3 of the United Nations Convention Against Torture, including withholding or deferral of removal under 8 C.F.R. § 208; cancellation of removal; adjustment of status; registry; de novo review of a denial or revocation of temporary protected status (current or future); waivers under Title 8, United States Code, §§1182(h) or 1182(i); visa petitions; consular processing; voluntary departure or any other possible relief or protection from removal available under the Constitution, laws or treaty obligations of the United States. As part of this Agreement, Defendant specifically acknowledges and states that Defendant has not been persecuted in, and has no present fear of persecution in, Kazakhstan on account of his race, religion, nationality, membership in a particular social group, or political opinion. Defendant further acknowledges and states that Defendant has not been tortured in, and has no present fear of torture in, Kazakhstan. Defendant understands that if he is an alien lawfully admitted for permanent residence, acceptance of a final order of deportation or removal from the United States terminates that status.

Defendant understands that execution of an order of removal against him may have the legal consequence under the immigration laws of permanently barring him from reentering the

United States.

Defendant agrees and stipulates to accept a final judicial order of deportation or removal knowing that it will result in his amenability to immediate deportation or removal from the United States upon conviction and completion of any period of incarceration. Defendant agrees that the order of deportation or removal be issued for his deportation to Kazakhstan, or to any other country as prescribed by the immigration laws and regulations of the United States of America.

Defendant knowingly waives any and all rights to appeal, or to move to reopen or reconsider, or to seek to vacate, or to otherwise seek any judicial or administrative review of, the order of deportation or removal or the right of the United States Department of Homeland Security ("DHS") to enforce such order. Defendant waives any right to and agrees he will not seek any judicial or administrative stay of execution of the order of removal or deportation. Defendant waives any right to seek release from the custody of DHS when DHS assumes such custody after conviction and his release from any period of incarceration and preparatory to arrangements for his deportation or removal from the United States. Defendant agrees he will in all ways cooperate with DHS officials in the surrendering of or applying for any travel documents, or in other formalities relating to his deportation or removal from the United States and preparations therefor.

7. Payment of Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless Defendant establishes to the satisfaction of the Court that Defendant is financially unable to do so.

8. Payment of Fine

Defendant agrees to pay any fine ordered by the Court within 10 days of sentencing, unless Defendant establishes to the satisfaction of the Court that Defendant is financially unable to do so.

9. U.S. Probation Office Not Bound By Agreement

The sentencing disposition agreed upon by the parties and their respective calculations under the USSG are not binding upon the United States Probation Office.

10. Information For Presentence Report

Defendant agrees to provide all information requested by the U.S. Probation Office concerning Defendant's assets.

11. Civil Liability

By entering into this Agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability, Defendant may have incurred or may incur as a result of Defendant's conduct and plea of guilty to the charges specified in Paragraph 1 of this Agreement.

12. Withdrawal of Plea By Defendant or Rejection of Plea by Court

Should Defendant move to withdraw his guilty plea at any time, or should the Court reject the parties' agreed-upon disposition of the case or any other aspect of this Agreement, this Agreement shall be null and void at the option of the U.S. Attorney. In this event, Defendant agrees to waive any defenses based upon the statute of limitations, the constitutional protection against pre-indictment delay, and the Speedy Trial Act with respect to any and all charges that could have been timely brought or pursued as of the date of this Agreement.

13. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Agreement, has engaged in any of the activities set forth in Paragraph 4(a)-(j), has violated any condition of Defendant's pretrial release, or has committed any crime following Defendant's execution of this Agreement, the U.S. Attorney may, at her sole option, be released from her commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to her under the law, regardless whether she elects to be released from her commitments under this Agreement. Further, the U.S. Attorney may pursue any and all charges which otherwise may have been brought against Defendant and/or have been, or are to be, dismissed pursuant to this Agreement. Defendant understands that his breach of an obligation under this Agreement shall not give rise to grounds for withdrawal of Defendant's guilty plea, but will give the U.S. Attorney the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements that Defendant may make, and any information, materials, documents or objects that Defendant may provide to the government subsequent to this Agreement, without any limitation. In this regard, Defendant hereby waives any defense to any charges that Defendant might otherwise have based upon any statute of limitations, the constitutional protection against pre-indictment delay, or the Speedy Trial Act.

14. Who Is Bound By Agreement

This Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

15. Complete Agreement

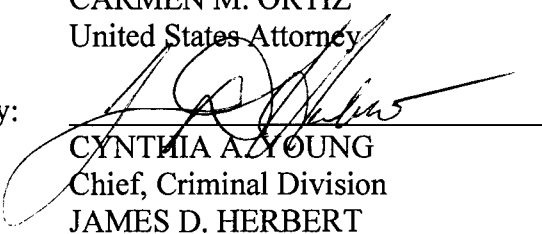
This letter contains the complete and only agreement between the parties relating to the disposition of this case. No promises, representations or agreements have been made other than those set forth in this letter. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorneys John A. Capin and B. Stephanie Siegmann.

Very truly yours,

CARMEN M. ORTIZ  
United States Attorney

By:

  
CYNTHIA A. YOUNG  
Chief, Criminal Division  
JAMES D. HERBERT  
Deputy Chief, Criminal Division

ACKNOWLEDGMENT OF PLEA AGREEMENT

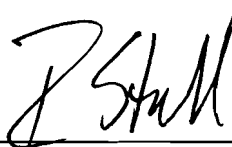
I have read this letter and have had this letter read to me in my native language in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter and that the U.S. Attorney has not extended any other offers to resolve this matter. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses and Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty and I believe this Agreement is in my best interest.



\_\_\_\_\_  
Dias Kadyrbayev  
Defendant

Date: 08/20/14

I certify that Defendant Dias Kadyrbayev has read this Agreement and has had this Agreement read to him in his native language and that we have discussed its meaning. I believe he understands the Agreement and is entering into the Agreement freely, voluntarily and knowingly. I also certify that the U.S. Attorney has not extended any other offers to resolve this matter.



\_\_\_\_\_  
Robert G. Stahl  
Attorney for Defendant

Date: 8/20/14



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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
 )  
 v. )  
 ) Crim. No. 13-10238-DPW  
DIAS KADYRBAYEV (1), )  
 )  
 Defendant. )

**STIPULATION OF FACTS**

The United States of America and the Defendant, Dias Kadyrbayev, pursuant to a plea agreement between the parties, stipulate that the following facts<sup>1</sup> are true and accurate:

1. Kadyrbayev is a national of Kazakhstan who entered the United States on a student visa in August 2011. Kadyrbayev was accepted into the Navitas University Pathway Program at University of Massachusetts at Dartmouth (“UMass/Dartmouth”) with a start date of September 7, 2011. Kadyrbayev attended the UMass/Dartmouth from the fall of 2011 until January 2013 when he was academically dismissed for failure to attend classes.

2. Kadyrbayev met Dzhokhar Tsarnaev, Azamat Tazhayakov, and Robel Phillipos during the fall of 2011 while attending UMass/Dartmouth. In the fall of 2012, Kadyrbayev and Tazhayakov decided to move off campus and rented an apartment in New Bedford, Massachusetts located at 69A Carriage Drive, New Bedford, Massachusetts. Until their immigration arrests on April 20, 2013, Kadyrbayev and Tazhayakov shared this two-bedroom apartment. Tsarnaev was a frequent visitor at their apartment and became one of Kadyrbayev’s closest friends in the United

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<sup>1</sup> This stipulation of facts does not prevent any party from supplementing this stipulation at the defendant’s plea colloquy or at any subsequent proceedings relating to the sentencing of the defendant with facts not contrary to those contained herein.

States.

3. By April 2013, Kadrybayev had lived in the United States for close to two years and was able to communicate in English.

4. On Monday, April 15, 2013, at approximately 2:49 p.m., while the Boston Marathon was underway, two explosions occurred seconds apart on Boylston Street in close proximity to the finish line. The bombs killed three people and maimed and seriously injured approximately 260 others. The FBI's Joint Terrorism Task Force immediately launched an investigation.

5. Immediately following the bombings and continuing until approximately 8:46 p.m. on Friday, April 19, 2013, when Dzhokhar Tsarnaev was arrested, thousands of law enforcement personnel from local police departments, the Massachusetts State Police, and federal agencies conducted an extensive manhunt for the two suspected Boston Marathon bombers, later identified as Tamerlan Tsarnaev and Dzhokhar Tsarnaev. At approximately 5:15 p.m. on April 18, 2013, the FBI released video footage and photographs of the two suspected bombers at a press conference and requested the public's assistance in identifying the images of the two men depicted in the photographs. These photographs and the video footage were widely rebroadcast by media outlets all over the country and the world. By 6:50 a.m. on April 19, 2013, numerous media outlets had publicly identified Tamerlan Tsarnaev and Dzhokhar Tsarnaev as the men whose images appeared in the photographs and video footage released by the FBI in the bombing investigation and who were believed to be the suspected Boston Marathon bombers.

6. After the FBI released the photographs of the suspected bombers on the evening of Thursday, April 18, 2013, Kadyrbayev viewed these photographs and exchanged the following

text messages with Tsarnaev in English between 8:43 p.m. and 8:48 p.m. that night:

Kadyrbayev: yo bro  
Kadyrbayev: u saw the news?  
Tsarnaev: Yea bro I did  
Kadyrbayev: for real?  
Tsarnaev: I saw the news . . .  
Tsarnaev: Better not text me my friend  
Tsarnaev: LOL  
Kadyrbayev: u saw urself in there?  
Kadyrbayev: ahaha...  
Kadyrbayev: hahaha  
Tsarnaev: If yu want yu can go to my room and take what's there☺ but ight bro  
Salam aleikum  
Kadyrbayev: what's wrong with u?  
Kadyrbayev: haha☺

7. After exchanging these text messages with Tsarnaev, Kadyrbayev asked Tazhayakov to come back to their apartment. Once Tazhayakov returned to their apartment, Kadyrbayev showed him the photographs of the suspected bombers that the FBI had released earlier that evening and Kadyrbayev and Tazhayakov then drove to the UMass/Dartmouth campus. Shortly after arriving at the campus, Kadyrbayev and Tazhayakov went to Tsarnaev's dormitory room.

8. At approximately 10:00 p.m., Kadyrbayev, Tazhayakov, and Phillipos entered Tsarnaev's dormitory room at the UMass/Dartmouth campus. After entering his dormitory room, Kadyrbayev searched Tsarnaev's dormitory room.

9. While inside Tsarnaev's dormitory room and searching through Tsarnaev's belongings, Kadyrbayev found a backpack containing fireworks and a jar of Vaseline. The fireworks appeared to have been opened, manipulated, and some of the explosive powder appeared

to have been removed. After finding this backpack and the fireworks, Kadyrbayev showed them to Tazhayakov. They both agreed to remove the backpack from Tsarnaev's dormitory room.

10. Kadyrbayev continued to search Tsarnaev's belongings after finding his backpack. In addition to his backpack, Kadyrbayev found Tsarnaev's laptop computer. At approximately 10:30 p.m., Kadyrbayev, Tazhayakov, and Phillipos left Tsarnaev's dormitory room. When they left, Kadyrbayev removed several items from Tsarnaev's room, including Tsarnaev's laptop computer and his backpack and its contents.

11. After removing these items from Tsarnaev's dormitory room, Kadyrbayev returned to the 69A Carriage Drive apartment with Tazhayakov and Phillipos. Tazhayakov saw Kadyrbayev remove several items from Tsarnaev's room.

12. After returning to their apartment, on the evening of April 18, 2013 and the morning of April 19, 2013, Kadyrbayev and Tazhayakov watched television news reports and read internet news articles about the bombing investigation and the manhunt for the two suspected Boston Marathon bombers who they believed were Dzhokhar and Tamerlan Tsarnaev. By 6:50 a.m. on April 19, 2013, the suspected bombers were publicly identified as Dzhokhar and Tamerlan Tsarnaev.

13. During the early morning hours of April 19, 2013, Kadyrbayev and Tazhayakov discussed getting rid of Tsarnaev's backpack and the fireworks. They both agreed that they should get rid of Tsarnaev's backpack. As a result of their agreement, Kadyrbayev placed the backpack and its contents, including the fireworks, into a large black trash bag and threw the entire bag into the garbage dumpster.

14. After discarding Tsarnaev's backpack in the garbage, Kadyrbayev decided to keep

Tsarnaev's laptop computer and continue to conceal it in their apartment and did not attempt to return it to Tsarnaev's dormitory room.

15. At approximately 1:30 p.m. on April 19, 2013, after Dzhokhar Tsarnaev had been identified on news reports as one of the two Marathon bombers, Kadyrbayev was aware that a garbage truck came to the apartment complex and removed the garbage dumpster where he had discarded and hidden Tsarnaev's backpack.

16. On the evening of April 18, 2013, Kadyrbayev believed that Dzhokhar Tsarnaev was one of the two Boston Marathon bombers and was being investigated in connection with the bombings. Kadyrbayev removed and concealed items from Tsarnaev's dormitory room, including the laptop computer and backpack, placed the backpack and its contents into a garbage dumpster, and hid Tsarnaev's laptop computer in his apartment with the intent to impede, obstruct, and influence an FBI investigation.

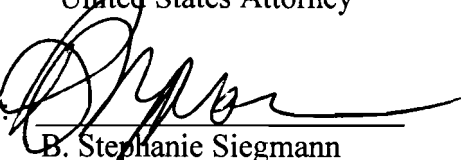
17. Later that day, after the garbage truck removed the garbage dumpster from the Carriage Drive apartment complex, it moved the contents of the dumpster to a landfill in New Bedford, Massachusetts. Over the course of two days, April 25, 2013 and April 26, 2013, 25 federal agents searched this landfill for the evidence Kadyrbayev had placed in the trash. On April 26, 2013, Tsarnaev's backpack, containing fireworks, a jar of Vaseline, and a thumb drive, was found at the landfill. Although these items were found, the condition of the backpack and its contents had been altered by the actions of Kadyrbayev and Tazhayakov.

These facts are stipulated and agreed to by:

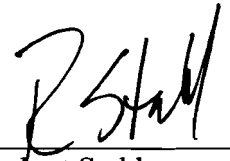
CARMEN M. ORTIZ  
United States Attorney

DEFENDANT

By:

  
B. Stephanie Siegmann  
John A. Capin  
Assistant U.S. Attorneys

  
Dias Kadyrbayev

  
Robert Stahl  
Attorney for Defendant