

Attorneys for accused Boston bomber move to suppress statements taken by FBI

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Defense attorneys representing accused Boston marathon bomber Dzhokhar Tsarnaev filed a series of motions last Wednesday, including a 21-page document urging the exclusion of statements taken by an FBI special interrogations team while the suspect was hospitalized and in custody.

The Obama Justice Department at the time refused to allow Tsarnaev to have a lawyer present during the questioning. According to the motion, Tsarnaev was in terrible mental and physical condition, having been hit with multiple gunshots fired by the police who seized him.

Shortly after Tsarnaev's capture, the FBI team's interrogation was declared to be permissible under the "public safety" exception to the constitutional right to an attorney and to protection against self-incrimination. The pretext for this violation of due process was the claim that Tsarnaev might have knowledge of other impending terror attacks. However, Massachusetts Governor Deval Patrick had already lifted the "shelter in place" order and declared the threat to be over.

Tsarnaev arrived at Beth Israel Deaconess Medical Center at around 9 pm on April 19, 2013. He had been shot by police 20 hours earlier. After a massive manhunt and the de facto imposition of martial law, police had found Tsarnaev hiding in a covered boat in the backyard of a suburban Boston house.

The motion filed by his defense team says he was attacked with two flash-bang grenades—designed to stun and disorient a victim with a burst of extremely loud noise and bright light—as well as a hail of bullets.

By the time of his arrival at the hospital, Tsarnaev had sustained gunshot wounds to the head, face, throat, jaw, left hand and both legs. One of the wounds to the head, which doctors attributed to a high-power bullet, shattered the base of his skull and is thought to have

caused traumatic brain injury and a concussion.

The 19-year-old suspect was in critical condition. He was intubated and prepped for major surgery, which left his jaw wired shut, his left eye sewn up with sutures, and his left ear without hearing. He also had a breathing tube running out of a hole in the base of his neck to allow him to breathe.

Following the life-saving surgery, Tsarnaev was given the narcotics Fentanyl, Propofol and Dilaudid, some of the most powerful painkillers in existence, all of which carry side effects affecting cognitive function.

Agents from the FBI "High Value Interrogation Group" began questioning him at 7:22 pm on April 20, just hours after his emergency surgery and while he was under the influence of narcotics and in extreme pain. According to the FBI's report on the interrogation—to which the defense motion referred but which is not available to the public—the interrogation continued, with some breaks, until 7:05 am the next morning, April 21.

The FBI agents resumed the interrogation that same day at 5:35 pm and continued until 9 am on April 22, when an attorney was appointed for Tsarnaev. For this entire period the accused was handcuffed to his hospital bed.

Unable to speak, the young man hand wrote brief statements to the FBI interrogators on a notepad, the only thing approaching a "record" of the unconstitutional questioning. Violating Justice Department protocol, the FBI made a conscious decision not to videotape the interrogation, so there is no way of knowing precisely when Tsarnaev wrote any particular note. The notepad is nonetheless an invaluable record of the FBI's violation of the rights of the accused.

In an obvious effort to invoke his right to have an

attorney present, Tsarnaev wrote the word “lawyer” no less than *ten times*, making a circle around the word in certain instances. A selection of his other writings underscores this intent.

“I am tired, leave me alone, I want a [illegible].”

“I’m hurt.”

“I’m exhausted.”

“You said you were gonna let me sleep.”

“Can we do this later?”

“I need to throw up.”

Other notes indicate that Tsarnaev’s mental state was severely compromised, including one of the first notes where he incorrectly listed his home address. In two others he referred to a noise he was hearing that no one else heard, an apparent auditory hallucination that is a side effect of the type of injuries he received and the powerful narcotics he was given.

Lastly, it is clear that the interrogators told Tsarnaev that his brother, Tamerlan Tsarnaev, his alleged co-conspirator who had been killed by police gunfire, was still alive.

“Is my brother alive I know you said he is are you lying Is he alive?” he wrote, and later: “Is he alive, show me the news! Whats today? Where is he?”

The Motion to Suppress alleges other ways the FBI impeded Tsarnaev’s access to legal counsel and otherwise conspired to violate his constitutional rights.

For example, when attorneys at the Boston federal defender office made effort after effort to speak with Tsarnaev, FBI agents refused to allow them to even enter the hospital. They would not deliver letters to Tsarnaev advising him of his right to counsel. FBI agents even made the absurd claim that Tsarnaev was not entitled to an attorney while at the hospital because he was not in custody, a claim belied by the fact that he was chained to his hospital bed.

The Motion to Suppress also alleges that the FBI intentionally delayed having Tsarnaev brought before a court for arraignment so that it could prolong his interrogation.

For its part, the trial court repeatedly refused to appoint a federal defender or other attorneys to defend Tsarnaev, despite requests from lawyers and the fact that charges had already been filed under seal.

One of the key arguments in the Motion to Suppress is that the “public safety exception” does not apply to Tsarnaev. Federal authorities announced ahead of time

their intention to interrogate Tsarnaev without first reading him his *Miranda* rights, invoking the public safety exception.

This exception allows law enforcement officers to question a suspect without reading the *Miranda* warnings when there is an imminent threat to public safety. The exception is not permitted when the suspect asks for an attorney, however, nor does it allow law enforcement officials to ask the suspect anything and everything. Only questions about the public safety threat—the location of a bomb, gun etc.—are permissible.

Based on the defense attorneys’ interpretation of the FBI’s report, it appears that Tsarnaev immediately answered all of the questions posed to him about other bombs or other imminent terror plots.

At the time of this writing, the prosecution has not filed a response to the Motion to Suppress.

The use of the FBI’s special interrogators in the Tsarnaev case mirrors the other unconstitutional government actions surrounding the Boston marathon bombings. These include the May 2013 FBI killing of Ibragim Todashev, a friend of Tamerlan Tsarnaev and, like the Tsarnaevs, an ethnic Chechen, and the police-military lockdown of Boston and surrounding communities four days after the bombings.

In late March, Tsarnaev’s lawyers requested the production of documents held by the government that they say would establish that the FBI approached his older brother, asking him to become an informant on the Chechen and Muslim communities. An uncle to the Tsarnaev brothers, Ruslan Tsarni, has ties to the CIA. No plausible explanation has been given for what appears to be government shielding of Tamerlan Tsarnaev prior to the bombings despite multiple warnings to the FBI and CIA of his connections to Islamist separatist terrorists in Russia.



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