IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

CASE NO. 1:12-cr-10264-RGS

DANNY VELOZ (4)

MOTION FOR RECUSAL

Defendant Danny Veloz respectfully moves that this Court recuse itself, pursuant to 28 U.S.C. § 455(a), and that this case be redrawn to another judge.

BACKGROUND

Defendant Danny Veloz was indicted by the Grand Jury on September 27, 2012 for Conspiracy to Commit Kidnapping, in violation of 18 U.S.C. § 1201(c). Defendants charged in federal court with a felony who cannot afford to obtain adequate legal representation on their own are entitled to have such representation furnished to them. On September 28, 2012, CJA counsel was appointed by the Court to represent Defendant. Arraignment and a detention hearing were held on October 16, 2012. Over the next year, five status conferences were held. During this period defendant's prior counsel did not file any motions or formal discovery letters pursuant to L.R. 116.3(a). On October 4, 2013, the Defendant filed a *pro se* Motion to Terminate

Attorney (Doc. No. 133), and on October 15, 2013, his attorney moved to withdraw (Doc. No. 134). A hearing was held on October 28, 2013, prior counsel was allowed to withdraw, and Mark W. Shea was appointed. During the ensuing two years, undersigned counsel filed six motions to suppress with seven accompanying memoranda of law,[1] and two lengthy discovery letters under L.R. 116.3(a).[2] Additionally counsel engaged in discovery negotiations via email, telephone and in-person conferences with the prosecutor. There were five status conferences, one motion hearing regarding discovery, a hearing regarding the taking of a buccal swab and a hearing regarding the suppression motions.

On September 12, 2015, undersigned counsel submitted a payment voucher for the 20-month period covering October 28, 2013 to June 30, 2015, and, as required, filed a detailed memorandum supporting and justifying the additional time for extended or complex representation. 18 U.S.C. § 3006A(d)(3). Counsel's bill was informed by the local CJA Guidelines, including writing off time, as is seen in the motion for paralegal funds, where over 50 hours was written off. On September 28, 2015, the Court denied counsel's voucher, stating the following:

> The amounts claimed for reviewing records, legal research, and brief writing are excessive for an attorney with this level of experience and is beyond anything that the court can reasonably allow. As it previously committed, the court will allow the amounts claimed for travel and time spent on investigation.

[1] Doc. Nos. 209, 225, 226, 235 – 238, 262, 263, 264.
[2] Doc. Nos. 232, 399.

> Also, the court requires justification for the excessive amount of time spent in conference with co-counsel.

The *Guide to Judiciary Policy*, Vol. 7 (Defender Services), Ch. 2, § 230.36 concerns Notification of Proposed Reduction of CJA Compensation Vouchers. This section provides in relevant part, that if the reviewing judge,

> determines that a claim should be reduced, appointed counsel should be provided:
> - prior notice of the proposed reduction with a brief statement of the reason(s) for it, and
> - an opportunity to address the matter.

In denying the voucher, this Court did not follow the CJA guidelines, and gave counsel no guidance, other than requesting justification for time spent conferencing with co-counsel. This Court did not propose a suggested amount for reduction in the claim, and did not provide any explanation as to how counsel could be compensated for past or future efforts on his client's behalf. Defendant is left with the impression that this Court has denied his attorney compensation for all but the investigation. This may be a misreading of the Court's statement in denying the voucher, but without guidance as to how the bill is excessive, or how to address the Court's concerns, it is not an unreasonable interpretation. Defendant believes that the denial of his counsel's entire bill, except for travel and time spent on investigation because of previously allowed motions for funds, clearly has a chilling effect on his efforts to mount a zealous defense.

It is clear that the case at bar is both complex and extended, as those terms are defined by the CJA Guidelines. As noted above, undersigned counsel was appointed on October 28, 2013, and the defendant was indicted on September 27, 2012, with trial scheduled for February 29, 2016. Access to computer electronics, which are at the center of the case, have continued to be provided by the Government during the pendency of the case. As recently as September 15, 2015, the defense was provided with the contents of a tablet computer seized from the defendant's residence in July of 2012. The Government has averred that it is arranging for two computers seized from the location where the victim was held, and which belonged to a cooperating co-conspirator, to be turned over to the defense in the near future. These likely contain gigabytes worth of data. This is an extended case and the reasons for its length lie at the feet of the Government and its delays in reviewing items that were in its sole custody. Defendant notes that this issue has been recognized in the local CJA Plan: "The Court recognizes that the nature of the legal services performed by defense counsel depends in large part on actions taken by the prosecution and the Court itself, and that therefore counsel's ability to control costs is at least somewhat limited." *Massachusetts CJA Guidelines, Introduction*.

The case at bar is also complex. The Government alleges that the defendant is the "maestro" of a kidnapping conspiracy where potential victims were identified and subsequently tracked with GPS. The nature of

the charged offense, conspiracy to commit kidnapping, which has a Base Offense Level of 32, is among the more serious federal felonies. The Government allegations regarding, injuries to the victim, use of a weapon, request for ransom, use of computers and leadership role in the conspiracy place the offense level literally above murder on the sentencing guideline charts. Thus, under the Government's claimed facts the Defendant is looking at a guideline sentence of life. As regards to discovery, there are twenty or more electronic devices involved in the case, including smart phones, laptop computers, tablet computers, and 8 gigabytes of information from the defendant's computer alone. The Government has produced over 4500 items of Bates stamped materials. Many of these items, although marked with only a few Bates numbers, include thousands of pages of documents. For example, a DVD attached to a report marked as Bates No. 3152 – 3159 contains over 3900 pages of phone extraction reports.

There are allegations of up to seven separate and distinct kidnappings. The case involves co-conspirators from other gangs and criminal organizations. It also involves two murders in retaliation for kidnappings said to involve members of this criminal conspiracy. The targets were allegedly tracked in states from Maine to New York and the kidnappings involved both Massachusetts and New Hampshire. There are four known cooperators, and roughly twenty sources of information or confidential

witnesses.[3] The Government has also disclosed information that indicates that at least two of the cooperators may have been running their own kidnapping crews or working for rival kidnapping crews. Similarly, one of the cooperators has implicated a fellow cooperator in a dismemberment-style murder in Puerto Rico. The panoply of victims and witnesses in the alleged kidnappings are spread amongst numerous states and possibly different countries. Defense counsel expects the trial to take upwards of a month.

Obviously, the Government has provided discovery because it intends to introduce this evidence at trial. Given that the Defendant's computer is said to contain GPS data that connects him directly to a GPS device found on the kidnapping victim's vehicle, it would be ineffective not to attempt to suppress it. Defendant filed seven memoranda in support of six motions to suppress. The Court should note that the Government sought warrants for emails after the original filing deadlines for suppression motions, thus extending both the dates for filing, issue spotting and memo writing. The issues in suppression involved photo arrays with the Defendant displayed twice in a sequence of six photos. It involved the prosecutor putting words in a witness's mouth at the grand jury. It involved allegations, which counsel stands by, that the FBI case agent willfully misled the magistrate judge when seeking search warrants. Defendant believes that the suppression

[3] The Government has said they do not intend to call them at trial, but almost all give information regarding either the Defendant, the so-called "Joloperos," and/or murders.

issues raised in his six motions are not only valid, but live, cutting-edge issues that are currently playing out on the appellate courts. *See, e.g., United States v. Tanguay*, 787 F.3d 44 (1st Cir. 2015); *United States v. Ganias*, 755 F.3d 125, (2d Cir. 2014), reh'g en banc granted, 791 F.3d 290 (2d Cir. 2015). Moreover, the suppression motions were filed over a period of time as discovery in the case was disclosed to him. The timing of the release of discovery was not controlled by the Defendant.

In addition to the evidentiary motions already filed, in its ongoing review of the case the defense has uncovered what it believes to be further Government misconduct regarding the searches. Additionally, critical evidence has been returned to its owners, without the Defendant's consent or without any opportunity to preserve or review the evidence. Defendant maintains that this issue should be litigated. The defense also reasonably believes that there are inaccuracies in the decision denying the suppression motions that need to be challenged. He also believes that he should have been granted leave to file a supplemental memorandum regarding the *Franks* issue, when the First Circuit issued a decision, *Tanguay*, *supra*, after the parties had argued before this Court. Defendant notes that the Government assented to the supplemental briefing, with the *proviso* that it could file a responsive memorandum.[4]

[4] Doc. No. 392.

Moreover, challenging the veracity of the cooperating witnesses and the Government agents will be a major part of the defense at trial. By denying counsel compensation for work already completed, the Court has discouraged counsel from "doing all that a complicated case calls for." *United States v. Bailey*, 581 F.2d 984, 989 n.38 (D.C. Cir. 1978). Counsel has not been able to retain a paralegal to assist in the case, as he cannot expend further money without compensation. Counsel sought a student paralegal, but upon learning there was no compensation, the student accepted another opportunity. Additionally, the Court has not approved a motion for investigator,[5] which was filed on October 7, 2015, and is the Defendant's first and only motion for an investigator. An investigator is needed to locate the correct address for critical witnesses for the Defendant at trial. Without this investigator, the Defendant will be denied the right to call witnesses in his defense.

Respectfully, the Court seems to not fully appreciate what is involved in defending this complex case where a potential life sentence hangs in the balance. First, reliance on the Government to search and interpret the most critical evidence is not sound legal work, as the Government will be searching for information that supports its view of the case and a conviction. However, due to the Court's view that defense counsel's time put into the case so far is excessive, Defendant will be reliant on the Government's production and

[5] Doc. No. 434.

searches of the electronic devises. Defendant further notes that the Government, with its resources, is cross-referencing the electronic devices to connect the conspirators to the Defendant. It is incumbent upon defense counsel to attempt to cross-reference all the devices and connect the conspirators to other groups and kidnappings not affiliated with the Defendant. This would be both exculpatory and impeachment material, and involves review of all the discovery and the more than 3900 pages of phone extraction reports received on August 25, 2015. In short, there is literally hundreds of hours of work to be done.

Finding that too much time has already been expended on legal research and writing, which involves primarily suppression and discovery issues,[6] implies that, at the very least, any future efforts on suppression or discovery issues will not be compensated. Defendant believes that limiting his counsel's efforts regarding the most damaging pieces of evidence against him creates the appearance that the Court is seeking to limit counsel in an effort to check counsel's zealous advocacy, and is an unconstitutional interference with his right to counsel. Defendant notes that, in addition to rejecting his counsel's payment voucher, the Court has yet to act on a motion for funds for an investigator, for a computer so that the Defendant may review evidence at MCI-Cedar Junction where he is presently incarcerated,

[6] Defendant also filed a 10-page memorandum successfully opposing the Government's motion to compel production of a DNA sample, as well as hair and fingerprint evidence (Dkt. No. 333).

and has denied funds for an expert to view obviously relevant computer evidence.[7] The Defendant's view that the Court has interfered with his right to counsel leads the defendant to respectfully request recusal under 28 U.S.C. § 455(a).

ARGUMENT

The law requires "[a]ny justice, judge or magistrate of the United States [to] disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The First Circuit has "considered disqualification appropriate … when the facts asserted 'provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality.'" *In re Boston Children's First*, 244 F.3d 164, 167 (1st Cir. 2001) (issuing writ of mandamus requiring recusal of district court judge based on comments to the press), quoting *In re United States*, 666 F.2d 690, 695 (1st Cir. 1981).

While the decision whether or not to recuse oneself is within a judge's discretion, the First Circuit has adopted the view that "the district court should exercise that discretion with the understanding that, 'if the question of whether § 455(a) requires disqualification is a close one, the balance tips in favor of recusal.'" *In re Boston Children's First*, 666 F.2d at 167, quoting *Nichols v. Alley*, 71 F.3d 347, 352 (10th Cir. 1995).

[7] See Dkt. Nos. 434, 449, and 465.

Where, as here, the statements expressed by the judge is not based on information acquired from an extrajudicial source, but instead has been "formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, [they] do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *United States v. Liteky*, 510 U.S. 540, 555 (1994).

In this case, the previous attorney, who was unable to locate a single suppression or discovery issue in an effectively life felony case, was compensated by the Court. When the Defendant received counsel who actually litigated on his behalf, the Court sought to chill his efforts by describing Defendant's counsel's work as unreasonable and excessive. The Court's denial of payment to counsel and to a computer expert and the Court's refusal to act on the most basic of funding motions, gives the appearance that the Court has a deep-seated antipathy that would preclude

fair consideration of the Defendant at trial. Therefore, Defendant respectfully submits that the Court should recuse itself. Defendant requests to be brought into court for this proceeding.

Respectfully submitted,
DANNY VELOZ
By his attorney

/s/ Mark W. Shea Dated: December 24, 2015

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/s/ MARK W. SHEA
Mark W. Shea

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	Cr. No. 12-10264-RGS
	)	
4. DANNY VELOZ, ET AL.	)	
Defendant	)	

GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO RECUSE

Section 455(a) of Title 18 provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The test under §455(a) for determining whether a judge's impartiality might reasonably be questioned is as follows:

> Whether the charge of lack of impartiality is grounded on facts that would create a reasonable doubt concerning the judge's impartiality, not in the mind of the judge himself or even necessarily in the mind of the litigant filing the motion under 28 U.S.C. §455, but rather in the mind of the reasonable man.

United States v. Voccola, 99 F.3d 37, 42 (1st Cir. 1996) (citations omitted). "[S]ection 455(a) requires that we ask whether a reasonable person, fully informed of all the relevant facts, would fairly question the trial judge's impartiality." In re United States, 158 F.3d 26, 31 (1st Cir. 1998) (emphasis in original).

The defendant's motion boils down to this: he filed several motions to suppress, which the Court denied, and he filed motions for funds, which the Court allowed in part. Because the Court ruled against him on some issues, the defendant perceives an "appearance that the Court has a deep-seated antipathy that would preclude fair consideration of the Defendant at trial." Defendant's Motion at 10-11. To put it mildly, this is not the standard for recusal.

It is well-settled that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." Liteky v. United States, 510 U.S. 540, 555 (1994).[1] The fact that the Court denied a motion to suppress evidence seized pursuant to federal search warrants or motions to suppress identifications made by people with longstanding ties to one another is hardly evidence of bias. Cf. In re United States, 441 F.3d 41, 65, 67 (1st Cir. 2006) ("courts will reject what appears to be a strategic motions to recuse a judge whose rulings have gone against the party").

Moreover, notwithstanding the tone of the defendant's motion, the partial denial of the defendant's request for funds is not evidence of bias. Cf. In re United States, 158 F.3d 26, 35 (1st Cir. 1998) ("A party cannot cast sinister aspersions, fail to provide a factual basis for those aspersions, and then claim that the judge must disqualify herself because the aspersions, *ex proprio vigore*, create a cloud on her impartiality."). See also Brooks v. New Hampshire Supreme Court, 80 F.3d 633, 640 (1st Cir. 1996) ("The presumption of judicial impartiality cannot be trumped by free-floating invective, unanchored to specific facts."); In re United States, 666 F.2d 690, 694 (1st Cir. 1981) ("[A] judge once having drawn a case should not recuse himself on an unsupported, irrational, or highly tenuous speculation; were he or she to do so, the price of maintaining the purity of appearance would be the power of litigants or third parties to exercise a negative veto over the assignment of judges.").

[1] "A motion to recuse is a serious matter and must have a factual foundation." In re U.S., 441 F.3d 41, 65 (1st Cir. 2006). See Leland v. United States, 495 F.Supp. 2d 124, 127 (D.Me. 2007) (denying motion to recuse accompanying §2255 petition in part because defendant failed to file "an affidavit of bias"). No affidavit was filed here. The government does not expect to be privy to communications concerning the defendant's investigation and preparation for trial but the absence of an affidavit illustrates that the defendant's complaint is with the Court's rulings. Indeed, much of the defendant's ten-page "background" section is nothing more than a screed against the Court Order denying his various motions to suppress.

A judge has a "duty not to recuse himself or herself if there is no objective basis for recusal." In re United States, 441 F.3d at 67. This is neither a close nor a difficult case. The Court should therefore deny the defendant's motion to recuse out of hand.

Respectfully submitted,

CARMEN M. ORTIZ
United States Attorney

By: /s/ Christopher Pohl
Christopher Pohl
Peter K. Levitt
Assistant U.S. Attorneys

Dated: January 7, 2016

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on January 7, 2016.

/s/ Christopher Pohl
Christopher Pohl
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

vs. Docket No. 12-cr-10264-RGS

DANNY VELOZ

Defendant's Motion to Compel Production of Discovery: Computer Containing Electronic Discovery to Defendant's Place of Incarceration

The defendant, Danny Veloz, moves that this Honorable Court order his release from pretrial confinement, or in the alternative, to order that the government provide him with a secure computer for review of the electronic notebook and computer hard drives seized from his home, the cooperators' and co-defendants' computers, and other electronically stored information ("ESI"), while he is in pretrial confinement at Norfolk County House of Correction in Dedham, Massachusetts.

Denying the defendant reasonable access to the data on the computers, which can only be accessed on a computer that the ESI has been saved onto, in an extended and complex case, is a deprivation of due process of law and effective representation of counsel. Moreover, L.R. 116.4(a)(3) provides: "If in a multidefendant case any defendant is in custody, the government must insure that an extra copy of all audio and video recordings is available for review by the defendant(s) in custody." L.R. 116.1 also requires that all search materials be

provided to a defendant.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

To date, defense counsel has been provided with a voluminous amount of paper discovery, as well as ESI on an external hard drive, CDs, DVDs and thumb drives. Additionally, several computers, hard drives and tablet computers have not been provided to the defense, though available and in the custody and control of the government.

On August 9, 2015, after various attempts to get the evidence that is on the seized computers to the defendant at his place of custody (see attached affidavit of counsel), defendant filed a motion requesting an order for the government to provide a hard drive containing imaged copies of two laptops seized from 443-447 Andover Street, Lawrence, Massachusetts to MCI-Cedar Junction, where the defendant was then being detained[1] (Dkt. No. 406). On October 20, 2015, the government filed a motion regarding computer evidence, and proposed that the government or defense counsel provide a "clean" laptop computer to the United States Marshal Service, who would facilitate review of the ESI at MCI-Cedar Junction (Dkt. No. 438). This Court entered an Order regarding the government's motion (Dkt. No. 442).

Defense counsel negotiated with the Assistant U.S. Attorney and prison authorities in an attempt to obtain a laptop computer that would comply with the

[1] On March 7, 2016, defense counsel was informed via email from the U.S. Marshal Service that the defendant had been transferred to Norfolk County Correctional Center in Dedham, Massachusetts.

Order. To date, this has not been successful (see attached affidavit). Because the massive quantity of information on the computers seized by the Government cannot possibly be reviewed, organized and summarized by counsel alone, without the assistance of the defendant, in the three months remaining before trial, it is necessary either to release the defendant, or allow him to have a laptop computer to facilitate the review of this material if the defendant is to remain in pretrial confinement.

PROPOSED REMEDY TO SIXTH AMENDMENT VIOLATIONS

The defendant requests that this Court review the pretrial detention order now in effect and revoke or amend it with an order that the defendant be released and put on GPS or other monitoring. In doing so, the Court can assure the defendant's appearance in court on personal recognizance or an unsecured appearance bond amount, and set for a combination of conditions that advise the defendant of the penalties for violating a condition of release, and the consequences for violating a condition of release. Pretrial release will also not endanger the safety of any other person or the community.

If the Court does not release the defendant, the Court should amend its previous order (Dkt. No. 442), permitting the defendant to be provided with a secure laptop computer onto which all of the electronic discovery seized from the computers can be stored. The defense proposes that this computer be equipped with limited software, which will be inspected by a qualified individual as designated by the Court. The computer software would include: Word, Adobe Reader, Excel,

Windows Media Player, and a security password. The password will allow the defendant secure access to the discovery in this case, which is not otherwise available to him. A laptop is an efficient and secure means for the defendant to review the ESI in this case so he can meaningfully discuss the evidence with his defense team, and so that both the defendant and counsel can prepare an effective defense.

ARGUMENT

The Fifth Amendment guarantees every criminal defendant the right to due process of law. This includes both the right of access to counsel and to legal research material. *Smith v. Bounds*, 430 U.S. 817, 821 (1977). The Sixth Amendment provides that every criminal defendant has to right to counsel, which includes the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). Thus, the right to assist in one's own defense is a corollary of the right to access to an attorney. "[O]ne of the most serious deprivations suffered by a pretrial detainee is the curtailment of his ability to assist in his own defense." *Wolfish v. Levi*, 573 F.2d 118, 133 (2d Cir. 1979), rev'd on other grounds by *Bell v. Wolfish*, 441 U.S. 520 (1979).

Additionally, courts have an inherent authority to provide relief to defendants from jail regulations or decisions by prison administrators that significantly interfere with or unreasonably burden the exercise of the Sixth Amendment right to counsel. *Cobb v. Aytch*, 643 F.2d 946, 957 (3d Cir. 1981) (granting injunctive relief in class action enjoining prison transfers that

"significantly interfered" with pretrial detainees' access to counsel; *Wolfish*, 575 F.2d at 133 (granting injunctive relief in class action in which prison regulations restricted pretrial and sentenced detainees contact with attorneys were found unconstitutional because they "unreasonably burdened the inmate's opportunity to consult with his attorney and to prepare his defense."). Thus, "inmates must have a reasonable opportunity to seek and receive the assistance of attorneys. Regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to courts are invalid." *Procunier v. Martinez*, 416 U.S. 396, 419 (1974). Pretrial conditions may violate the sixth amendment when "they unreasonably burden the inmate's opportunity to consult with his attorney and to prepare his defense," *Benjamin v. Fraser*, 264 F.3d 175, 187 (2d Cir. 2001) (evaluating constitutionality of restrictions placed on attorneys visiting clients at Rikers Island), or when they result in the "actual or constructive denial of the assistance of counsel altogether." *United States v. Lucas*, 873 F.2d 1279, 1280 (9th Cir. 1989) (quoting *Perry v. Leeke*, 488 U.S. 272, 280 (1989)).

A. THE DEFENDANT'S FIFTH AND SIXTH AMENDMENT RIGHTS ARE BEING VIOLATED BY HIS CONDITIONS OF CONFINEMENT

The conditions of the defendant's confinement and the jail's refusal to permit him reasonable and meaningful access to the Government's disclosures while in pretrial detention are violating his due process and Sixth Amendment rights.

The defendant has not been afforded access to the bulk of the Government's ESI discovery, specifically the seized computers, which deprives him of his Fifth

Amendment right of both access to counsel and to legal case material, and the Sixth Amendment right to effective assistance of counsel and to assist in preparing his own defense. Veloz requests the use of a laptop computer that has the electronic discovery seized from the computers pre-loaded on it for his review. Because he has not had the opportunity to review the ESI that is on the seized computers, the defendant has not been able to meaningfully consult with his defense team, which is a deprivation of the right to effective representation. The defendant stands to face substantial penalties as a result of these charges, including a possible term of life imprisonment.

On appointment, undersigned counsel realized the legal and factual issues involved in this case required the expenditure of time and effort beyond what is normally required for the average federal felony case. Thus, counsel delved into a considerable and lengthy investigation of the law, facts and evidence. However, due to the conditions of the defendant's confinement, counsel has exhausted more than a significant amount of time examining documentary evidence and reviewing the evidence seized from various computers and cell phones in order to discern the general relevance of this information as well as to determine the identities of those involved. This time was and still is necessary to develop an adequate theory of the defense and to prepare for cross-examination of numerous witnesses anticipated to testify at trial. This is being done not only so that the defendant has the opportunity to meaningfully assist with his defense, but because it is necessary to do so in order that counsel can gain a basic understanding of the relevant ESI evidence available in

this case. To be at all effective, the defendant himself must have access to the computer discovery, as he is the only person who knows what is on his own computers and what it means. Counsel alone cannot discern what is important in the computer data.

Without the defendant having meaningful time and access to review these ESI materials himself, there is simply no way for the defendant to have a meaningful opportunity to assist in preparing for his defense, and for counsel and defendant to prepare an effective defense together.

Considering both the circumstances of his confinement and the amount and format of government disclosure, these conditions are a bar of Veloz's rights under the Fifth and Sixth Amendments.

B. PRETRIAL RELEASE OR THE PROVISION OF A SECURE LAPTOP COMPUTER AT HIS PLACE OF DETENTION IS AN APPROPRIATE, NARROWLY-TAILORED REMEDY

The Court should order the release of Veloz from pretrial detention. The Court can assure his appearance through a combination of conditions and GPS monitoring. Veloz could be limited to home confinement, and would be able to review the discovery in his case and communicate as often as necessary with his entire defense team. Release would ameliorate the conditions of confinement that continue to deprive him of his Fifth and Sixth Amendment rights.

If the Court declines to release Veloz, it should devise an appropriately tailored remedy to the injuries suffered from these constitutional violations. *See United States v. Morrison*, 449 U.S. 361, 367-368 (1982). A narrowly tailored

remedy in this case can first be accomplished through the provision of a secure laptop computer, which is necessary so that both counsel and the defendant can assist in preparing an effective defense. The sheer volume of discovery, as well as the format it has been provided in, necessitates that the defendant be allowed to use a laptop computer with secure software to review it. If any of the ESI on the computers is actually relevant, the defendant will recognize it, as well as the parties involved in the electronic communications. The defendant is in the critical position to know the significance of the names and information possessed by him, the co-defendants and the cooperators. Without the ability to review this information the defendant will be denied his rights to defend himself against these allegations. There are literally megabytes of data on all of these devices and the trial date has been moved numerous times so the materials could be reviewed by the defendant, yet Mr. Veloz is still without the ability to see even the items allegedly seized from him. The defense is in the untenable position of having to question the veracity of the information attributed to the defendant without even knowing if all of the information on these devices is his. Only the defendant can help counsel with this critical piece of the defense. Thus the defendant's right to counsel has effectively been denied him.

The Assistant United States Attorney is not opposed to the defendant having access to a laptop computer that contains or can access the ESI, but has left the administration of such access to the prison authorities. We are once again within three months of trial and the defendant is still without critical information. This

can no longer be left to the prison authorities. The Court's intervention is necessary and constitutionally appropriate.

The defendant requests a hearing on this motion as soon as possible and requests to be present in Court.

DANNY VELOZ
By his attorney

/s/ *Mark W. Shea* Dated: March 30, 2016

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I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on March 30, 2016.

/s/ Mark W. Shea
MARK W. SHEA

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

vs. Docket No. 12-cr-10264-RGS

DANNY VELOZ

Affidavit of Counsel in Support of Defendant's Motion to Compel Production of Discovery: Computer Containing Electronic Discovery to Defendant's Place of Incarceration

I, Mark Shea, do hereby depose and state as follows:

1. I am an attorney duly admitted to practice in the U.S. District Court for the District of Massachusetts.

2. I was appointed to represent the above-named defendant by this Court, on the grounds that he is indigent and unable to afford counsel.

3. On March 12, 2014, the Government provided discovery in for form of a hard drive that was seized from 443-447 Andover Street, Lawrence, Massachusetts. My office attempted to open and view the hard drive on that date, but was unable to open move of the files, which needed a program to run them. The files that we were able to open were essentially meaningless code.

4. I contacted an expert, MWV Multi-Media Forensic Investigative Services on April 14, 2014 to retain them to assist with the examination of the hard drive. I then sent the hard drive to MWV for review. I met with the experts on May 1, 2014. On May 9, 2014, the experts emailed me and informed me that the hard drive contained 161 GB of data, and provided me with a list of the digital evidence.

5. The experts were able to review information but were never able to put it in a form where the entire computer was accessible to

counsel. Thus, counsel has never been able to get it into a form or paper that could be provided to the client

6. I wrote to the Superintendent of MCI-Cedar Junction on July 24, 2015 requesting authority to have the external hard drive sent to the facility so the defendant could review it on his own time using the facility's computer that is reserved for inmate use. The Superintendent wrote back on August 3, 2015 denying the request (*see* Dkt. No. 409).

7. On August 9, 2015, I filed a motion requesting that the defendant be provided with a copy of the hard drive at MCI-Cedar Junction in Walpole, Massachusetts (Dkt. No. 406).

8. In August of 2015 I received the external hard drive back from the experts. It is not in a form that I can open and is not in a form that the correctional facilities accept.

9. In August of 2015 my paralegal and my law partner both tried to access the external hard drive, but were unable to do so. My paralegal met with the experts on August 11, 2015 to learn how to access the hard drive. The experts provided us with a thumb drive containing a software program that was necessary to extract the information. My paralegal then met with tech people at Suffolk University, who explained how to mount images from the hard drive onto a laptop computer. It thus became apparent to me that even if I was able to provide the hard drive to the defendant, it was not a simple matter of him being able to plug the hard drive into a computer and it being accessible.

10. I conferred with the prosecutor several times in person, via email and telephone, in an attempt to get the defendant a copy of the discovery from the computers in a workable fashion for him. The prosecutor conferred with a tech person from the FBI, the agency that had seized the computers, who informed him that in order to review the discovery we would need a laptop with at least 8GB of RAM, and an external hard drive with the mirror image of the computers.

11. The prosecutor also conferred with the United States Marshal Service ("USMS") regarding providing the defendant with a computer at his place of detention. The USMS advised that any laptop computer provided to the defendant to review the

discovery would have to be "clean," with no other information on it, no Internet access, no Wi-Fi capability, and no communication ability.

12. On October 20, 2015, the Government filed a Motion Regarding Veloz Computer Evidence, (Dkt. No. 438). The Court signed an order on October 21, 2015 (Dkt. No. 442).

13. My office enquired of the Defender Services Office ("DSO") of the Administrative Office of the United States Courts regarding the possibility of loaning the defendant a computer that met the specifications. The DSO responded that the only computer available had 4GB of RAM. My office contacted the prosecutor with the information, who in turn contacted the FBI, who re-confirmed that 8GB of RAM was needed. It was not clear whether the DSO's computer met the other specifications required by the USMS.

14. My office then enquired of several merchants regarding the availability and cost of a laptop computer meeting the specifications. We were informed that laptop computers made today do not have removable Wi-Fi cards, but have the Wi-Fi built in. My office also did an Internet search, but was not able to find any laptop computers meeting all the specifications, specifically 8GB of RAM and no Wi-Fi capability.

15. On December 2, 2015, defendant filed an *ex parte* application for funds so he could purchase a laptop computer for his use in his place of detention (Dkt. No. 465). This motion was denied (Dkt. No. 483). Counsel has never been paid and is owed well over $100,000 so it highly burdensome for the Court to expect counsel to front further costs that this Court apparently believes unnecessary.

Signed under the pains and penalties if perjury this 29th day of March 2016.

/s/ Mark W. Shea
MARK W. SHEA

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

vs. Docket No. 12-cr-10264-RGS

DANNY VELOZ

Defendant's Motion for Clarification of Counsel and the Right to a Defense

The defendant requests that this Honorable Court to hold a hearing, in the presence of the defendant, regarding the continuing role to be played by counsel. Undersigned counsel has not had payment authorized since his appointment in 2014. Counsel has been given no guidance on how he is to get paid or whether he will ever be paid. The defendant is concerned that he has been effectively stripped of counsel (see generally Motion for Recusal, Dkt. No. 466). Additionally, despite previous requests, defendant has not been brought to court for over a year, since January 7, 2015. The Court has also denied the most recent motion for a computer expert (Dkt. Nos. 449-450), for an investigator (Dkt. No. 434, 484), and for a laptop computer to be provided to the defendant so that he may review discovery (Dkt. No. 465, 483). Thus, the defense is left unable to employ anyone to review the gigabytes of discovery and is unable to locate and interview witnesses.

The defendant is left to sit in jail without access to significant discovery, and apparently having been denied a defense. The defendant requests an immediate hearing on this matter, at which he is present, so that the Court can explain to him what his Fifth and Sixth Amendments rights to

counsel and to a defense are in this case, where significant funds to mount a defense have been effectively denied.

Respectfully submitted,
DANNY VELOZ
By his attorney,

Dated: March 30, 2016

/s/ *Mark W. Shea*
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Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on March 30, 2016.

/s/ Mark W. Shea
MARK W. SHEA