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December 16, 2025

Via ECF and Email

Honorable Dora L. Irizzary
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: **United States of America v. Shlomo Patchiav**
Crim. Dkt. No.: 1:23-cr-00099-(DLI)

Dear Judge Irizzary:

I am the attorney for the Defendant Shlomo Patchiav, in the above-referenced Case, and I am writing in Opposition to the Government's Supplemental Memorandum of Law in Support of the Government's motion in limine in connection with the upcoming trial of my client. The Defendant now replies to the Government's latest attempt to deny Mr. Patchiav a fair trial by allowing the trier of fact to review evidence wherein the probative value is substantially outweighed by its prejudicial effect. The Defendant reaffirms the arguments set forth in the original motion in limine filed on August 8, 2025 and the opposition filed on September 12, 2025 with the reply filed on September 26, 2025.

I. BACKGROUND FACTS

Once again, Mr. Patchiav maintains his innocence in this case and that fact has been repeatedly communicated to the Government. Mr. Patchiav's opposition will be limited to the prejudicial circumstantial evidence the Government is attempting to use in in order to convict the Defendant based upon the crimes committed by Sanat Djumayey. The DNA of Mr. Patchiav along with the DNA of two (2) other unidentified persons was found on a hat bearing the logo of an out of business crypto currency company. Of note is that of the dozens other items tested for DNA from the Chevy Malibu, no DNA of the Defendant was found. Moreover, the

Defendant was not present when Djumayev purchased the vehicle in Pennsylvania on June 25, 2022 nor is there any evidence of Mr. Patchiav ever being in or around the vehicle with the exception of his standing next to it in Ellenville on June 26, 2022 with Djumayev and the owner of the Ellenville house. This has clearly been an issue for the Government which explains the sudden demand that the DNA swabbing be completed long after the grand jury had indicted Mr. Patchiav. Specifically regarding the hat, it must be noted that appears to be the same one to worn by Djumayev in a video taken on June 25, 2022 at 5:44pm.[1] The time in the Government's video must be carefully considered by this Honorable Court because it is a time when the Defendant was observing the Jewish Sabbath. Given that Djumayev had taken the Defendant's car that Saturday, it is probable that he took the hat, wore it and threw it in the trunk of the Chevy Malibu. The Defendant reserves his rights to engage his own expert to review the video of Djumayev at the time he is seen wearing the baseball cap on June 25, 2022.

Despite the clear and unequivocal facts in this case demonstrating that Djumayev and other unidentified persons committed the instant crimes, the Government's only focus is on the prosecution of Mr. Patchiav. The Government continually pushes to introduce evidence of a murder, extortion, and coverup committed by Djuamayev as well as inflammatory pictures of the victim's decomposed body, despite never having provided evidence of Mr. Patchiav's agreement to participate in the conspiracy charged herein. The DNA evidence is yet another attempt by the Government to crowbar the prejudicial information into evidence despite its continuing failure to prove any conspiracy that existed involving Mr. Patchiav, despite Mr. Djumayev seen wearing what appears to be the hat in question in a video the Government produced. Accordingly, the Defendant once again calls for his motion in limine to be granted and that of the Government to be denied. The primary relief requested is that the Government be compelled to demonstrate the existence of an agreement by Mr. Patchiav to join and participate in a conspiracy prior to allowing the trier of fact to review evidence which can only be characterized as inflammatory and prejudicial. Mr. Patchiav once against reiterates that the Government is forcing the defendant to answer for abhorrent conduct about which he had no knowledge, which was perpetrated by persons with whom he had a passing acquaintance and in furtherance of a criminal goal he did not share. The Government in its supplemental memorandum argues in opposition:

> "The location of the baseball hat in the trunk also establishes that the defendant had **access to the trunk of the Chevy Malibu, where the Victim's blood was found. Thus, the presence of the defendant's DNA on the baseball hat located in the same exact location as the Victim is direct evidence linking the defendant to the Victim's disappearance on the same day the Victim handed over his money and property to CC-1**. ECF. No. 113 ("Gov't Supplemental Memorandum of Law").

The Defendant objects to this characterization given that the DNA is only on the hat and not on any of the dozens of items swabbed throughout the Chevy Malibu including the tools in the trunk. Accordingly, the Government's claim that the Defendant had access to the trunk of the

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Chevy Malibu is not demonstrated by presence of a hat with DNA from three (3) different DNA contributors. More importantly, the DNA testing shows Mr. Patchiav is not a DNA contributor to any other items in the trunk or the Chevy Malibu which was unquestionably purchased and driven back to New York by Djumayev without any involvement by the Defendant. The presence of the baseball hat in the Malibu should not create a basis to allow for all the grisly and inflammatory actions of Djuamayev to be used against Mr. Patchiav by the Government. This Honorable Court should preclude any such use of this evidence as a vehicle for the Government to introduce the unduly prejudicial evidence of the victim's murder which will preclude the Defendant from having a fair trial.

II. LEGAL ARGUMENT

"The purpose of a motion in limine is to allow the trial court to rule in advance of trial on the admissibility and relevance of certain forecasted evidence." *Boateng* v. *Bayerische Motoren Werke Aktiengesellschaft,* 2024 U.S. Dist. LEXIS 63963, *4-5 (E.D.N.Y. 2024) *quoting Hopkins* v. *AMTRAK,* No. 08-CV-2965 (NGO) (RML), 2016 U.S. Dist. LEXIS 57236, 2016 WL 8711718, at *2 (E.D.N.Y. Apr. 29, 2016); *see also Luce* v. *United States,* 469 U.S. 38, 40 n.2, 105 S. Ct. 460, 83 L. Ed. 2d 443 (1984) (defining such motions as "any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered"). "Evidence should be excluded on a motion in limine only when the evidence is clearly inadmissible on all [*5] potential grounds." *United States* v. *Paredes,* 176 F. Supp. 2d 179, 181 (S.D.N.Y. 2001). "[C]ourts considering a motion in limine may reserve decision until trial, so that the motion is placed in the appropriate factual context." *Jean-Laurent* v. *Hennessy,* 840 F. Supp. 2d 529, 536 (E.D.N.Y. 2011) (citation omitted). Further, a district court's ruling on a motion inlimine is preliminary and "subject to change when the case unfolds." *Luce,* 469 U.S. at 41. Here, the Government's aim is to bring in all evidence of the nefarious and vile crimes that were probably committed by Sanat Djumayev despite the lack of evidence that the Defendant entered into any conspiracy with Djumayev to engage in the crime of extortion resulting in the murder of Shehroz Tokhirov.

In a very recent case, the Second Circuit explained the long held legal standard to establish conspiracy: "To prove conspiracy, the government must show that two or more persons entered into a joint enterprise for an unlawful purpose, with awareness of its general nature and extent,' and that those persons 'agreed to participate in what they knew to be a collective venture directed toward a common goal.'" *United States v. MacKey*, 143 F.4th 129, 139-140 (2d Cir. 2025)*quoting United States v. Jimenez*, 96 F.4th 317, 324 (2d Cir. 2024) *See also United States v. Khalupsky*, 5 F.4th 279, 288 (2d Cir. 2021)). "The defendant must have "knowingly joined and participated" in this joint enterprise." *Id citing Anderson*, 747 F.3d at 60 (internal quotation marks omitted). [*140] "[M]ere association with those implicated in an unlawful undertaking is not enough to prove knowing involvement." *United States v. Nusraty*, 867 F.2d 759, 764 (2d Cir. 1989). To underline the point, the government must prove the defendant's knowing agreement as to the conspiracy's "unlawful purpose." *Jimenez*, 96 F.4th at 324 (internal quotation marks omitted). Here, the sole evidence presented against Mr. Patchiav fails to establish that he entered into a conspiracy with Djumayev. The newly presented evidence in particular consists of a

baseball hat found in the trunk of the Chevy Malibu which has the DNA of the Defendant on it along with at least two (2) other unidentified persons. The dozens of other items tested reveal none of Mr. Patchiav's DNA on them. Significantly, there is a video from the previous day which shows Djumayev wearing what appears to be the same baseball cap. Critically, the Government has no explanation how the baseball cap got into the trunk of the Chevy Malibu. There is simply no evidence that the Defendant put it there.

These facts belie the Government's assertions that the presence of DNA "strongly rebuts the defendant's oft-repeated arguments that he had only a superficial relationship with CC-1." ECF. No. 113 ("Gov't Supplemental Memorandum of Law").

To the contrary, the DNA evidence instead demonstrates that the Defendant had at best a passing acquaintance with Djumayev and the victim which resulted in Mr. Patchiav loaning his brother's car to Djumayev who used it for unauthorized purposes about which Mr. Patchiav had no knowledge while Mr. Patchiav observed the Jewish Sabbath. The Defendant then provided a ride to Djumayev on June 26, 2025, to a location in Ellenville, New York previously unknown to him in exchange for five hundred dollars ($500.00) much like an Uber driver would have done.

"To sustain a conspiracy conviction, "the government must present some evidence from which it can reasonably be inferred that the person charged with conspiracy knew of the existence of the scheme alleged in the indictment and knowingly joined and participated in it." *United States v. Anderson*, 747 F.3d 51, 60 (2d Cir. 2014). *United States v. Hassan*, 578 F.3d 108, 123 (2d Cir. 2008). "[E]vidence of purposeful behavior designed to further a conspiracy must be shown to prove membership in that conspiracy." *United States v. McFarlane*, 198 Fed. Appx. 56, 58 (2d Cir. 2006) *quoting United States v. Chang An-Lo*, 851 F.2d 547, 554 (2d Cir. 1988).

It must be noted that "The Second Circuit has held , that prior act evidence admitted to demonstrate the background of a conspiracy would be unfairly prejudicial if the prior act involved conduct "more sensational or disturbing" than the crimes alleged." *United States v. Nachamie*, 101 F. Supp. 2d 134 *See United States v. Roldan-Zapata*, 916 F.2d 795, 804 (2d Cir. 1990) (prior act evidence not unfairly prejudicial because that evidence "did not involve conduct any more sensational or disturbing" than the crimes at issue). Evidence is not unfairly prejudicial when it "d[oes] not involve conduct more inflammatory than the charged crime." *United States v. Livoti*, 196 F.3d 322, 326 (2d Cir. 1999).*United States v. Avila*, 2024 U.S. App. LEXIS 2509, *3Here, the Government is suggesting that it is perfectly reasonable to introduce to the fact finder evidence of a murder having been committed, the victim's body being secreted in a car trunk and then dumped to decompose for the next several months in the interest of establishing Mr. Patchiav was allegedly part of an extortion conspiracy. Given that the violent murder and corpse disposal are so much more inflammatory than the alleged object of the conspiracy [extortion] this egregious criminal activity should not be allowed into evidence regardless of the presence of the Defendant's DNA along with the DNA of two (2) unidentified individuals on a baseball cap.

The Second Circuit Court of Appeals has held the standard for admitting prior act evidence is: "(1) the prior act evidence was offered for a proper purpose; (2) the [**26] evidence

was relevant to a disputed issue; (3) the probative value of the prior act evidence substantially outweighed the danger of its unfair prejudice; and (4) the court administered an appropriate limiting instruction." *United States v. Dupree*, 870 F.3d 62, 76 (2d Cir. 2017) *quoting United States v. Garcia*, 291 F.3d 127, 136 (2d Cir. 2002). Here, the Government wants to leap over the questions of prejudice and proper purpose entirely based upon its unproven and unestablished assertion that a conspiracy existed despite no real evidence of that fact being presented. To bring the point home there is no cooperating co-conspiratory; no tape recording of an agreement relating to the Defendant having any interest in extorting the victim and there is no admission or confession by the Defendant that he joined in or participated in a conspiracy.

In support of its position the Government cites *United States v. Ulbricht*, 79 F. Supp. 3d 466, 487 (S.D.N.Y. 2015), a markedly distinguishable case from the present facts. In that case, the Court expressly allowed for the introduction of evidence of a murder for hire plot directly related to the charged conspiracy involving large scale distribution of narcotics. The Court explained that the second circuit disfavors preclusion of evidence of violence in narcotics conspiracy cases.

> "Exclusion of [**41] the murder-for-hire evidence is not warranted under Rule 403. Since "**drug trafficking is often attended by violence**," United States v. Sureff, 15 F.3d 225, 228-29 (2d Cir. 1994), **courts in this Circuit repeatedly have declined to preclude evidence of violence in narcotics cases.** *See United States v. Viserto*, 596 F.2d 531, 537 (2d Cir. 1979) ("We have recognized that handguns are tools of the narcotic trade, and that possible prejudice does not outweigh the relevance."); *United States v. King*, 165 F.3d 15, [reported in full-text format at 1998 U.S. App. LEXIS 28265] (2d Cir. 1998) (holding that the district court did not abuse its discretion in admitting two handguns because "[e]xperience on the trial and appellate benches has taught that substantial dealers in narcotics keep firearms on their premises as tools of the trade." *United States v. Ulbricht*, 79 F. Supp. 3d 466, 487 (S.D.N.Y. 2015)

The Court further explained the scale of the conspiracy which differs markedly from the alleged conspiracy for which Mr. Patchiav is charged:

> Moreover, the Court has found that the charges in this case are extremely serious: Ulbricht is **charged not with participating in a run-of-the-mill drug distribution conspiracy, but with designing and operating an online criminal enterprise of enormous scope, worldwide reach, and capacity to generate tens of millions of dollars** in commissions. *Id.*

Similarly unavailing is *United States v. De Parias,* 805 F.2d 1447, 1454 (11th Cir. 1986) a case involving a kidnapping and murder where one of the co-conspirators testified against the other and identified him as the murderer. The Court allowed the graphic autopsy photos into evidence to substantiate the cooperating witness testimony about how the victim was killed by the defendant. As none of these facts exist in this case, we clearly have a distinguishable factual scenario.

This Honorable Court should consider that the Second Circuit has discussed other aspects of conspiracy which are far more relevant to this case stating:

> "We **have similarly overturned conspiracy convictions where, although the defendant had knowledge of the conspiracy, there was insufficient evidence from which the jury could reasonably have inferred that the defendant intended to join it."** *United States v. Santos*, 541 F.3d 63, 71-72 (2d Cir. 2008) *Citing United States v. Ceballos*, 340 F.3d 115, 127-28 (2d Cir. 2003) *United States v. Young*, 745 F.2d 733, 764 (2d Cir. 1984), cert. denied, 470 U.S. 1084, 105 S. Ct. 1842, 85 L. Ed. 2d 142 (1985); United States v. Gaviria, 740 F.2d 174, 184 (2d Cir. 1984)

The Defendant emphasizes that the Government has not demonstrated that Mr. Patchiav had knowledge of the conspiracy let alone that he was aware of the victim being extorted but elected not to join Djumayev's enterprise. The evidence of murder and disposal of a corpse would amount to little more than a backdoor attempt to once again turn this case into a murder prosecution because of DNA on a baseball cap that had nothing to do with the murder of the victim. To put it more bluntly, the Government is attempting to bootstrap the charged conspiracy against the Defendant with proof that the victim was murdered not by the Defendant but by the uncharged and unapprehended Sanat Djumayev who was more than likely the last person to wear the baseball hat.

For the reasons state above , evidence of Tokhirov's murder, are more prejudicial than probative. Accordingly, the Government's motion in limine should be denied.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Defendant respectfully requests that the Court deny the Government's motion in limine in its entirety and grant the Defendant's motion in limine.

Respectfully submitted,

Michael L. Soshnick, Esq.
Attorney for Defendant