

Federal Defenders
OF NEW YORK, INC.

Southern District
52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
Executive Director

Southern District of New York
Jennifer L. Brown
Attorney-in-Charge

February 12, 2023

By ECF

The Honorable Vernon S. Broderick
United States District Judge
Southern District of New York
40 Centre Street
New York, NY 10007

**Re: *United States v. Sayfullo Saipov*
17 Cr. 722 (VSB)**

Dear Judge Broderick,

We write in response to the government's letter dated February 12, 2023, regarding the Court's instructions to victim-impact witnesses and the jury.

The government's proposed instruction to the jury misses the mark. It is important for jurors to understand how they may (and may not) use testimony from victims and that they may not speculate about each witness's position on the appropriate punishment for Mr. Saipov.

The victim witnesses are being called by the government to prove non-statutory aggravating factors, and the plain implication is that they are all supportive of a death sentence. But that is not the case here: A majority of the victims were in favor of or did not oppose a plea to a life sentence, and one of the deceased victims expressed her opposition to the death penalty before she was killed. Thus, particularly where many victims do not actually support executing Mr. Saipov, it is appropriate to remind jurors that they should avoid speculating about the outcome desired by each victim witness not only because it is irrelevant to their deliberations, but also because their assumptions could be wrong.

Regarding the second instruction, the Court has already acknowledged that it would be appropriate to address victim-impact witnesses before they testify, and the parties' agreed-upon language strikes the appropriate balance. We do not object to addressing the victim-impact witnesses as a group the morning or afternoon of their testimony.

Respectfully Submitted,

/s/

David Patton
Andrew J. Dalack
Sylvie J. Levine
Annalisa Mirón
David Stern

Cc: Government Counsel