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| DISTRICT COURT BOULDER COUNTY, COLORADO<br>1777 Sixth Street<br>Boulder, CO 80302  | DATE FILED: September 1, 2021 9:11 PM |
| <b>PEOPLE OF THE STATE OF COLORADO</b><br><br>v.<br><br><b>AHMAD AL ALIWI ALISSA</b><br>Defendant  | <b>COURT USE ONLY</b>                 |
| Michael T. Dougherty, District Attorney<br>Adam Kendall, Chief Trial Deputy District Attorney<br>1777 Sixth Street<br>Boulder, CO 80302<br><br>Phone Number: (303)441-3700<br>FAX Number: (303)441-4703<br>E-mail: akendall@bouldercounty.org<br>Atty. Reg. #38905 | Case No.<br>21CR497<br><br>Div:13     |
| <p align="center"><b>People’s Request for Clarification from the Court Following the Filing of Defendant’s Notice of Raising Competency (P-008)</b></p>  |                                       |

On September 1, 2021, Ahmad Al Aliwi Alissa (the “Defendant”) filed his Notice of Raising Competency and an accompanying sealed motion raising competency (collectively, the “Notice”). This September 1, 2021 filing – just six days before a scheduled preliminary hearing in this case – is the first time Defendant has provided notice to the People and the Court of any alleged competency issues surrounding Defendant. The Court issued an order on September 1, 2021 stating that the Notice would be addressed at 9:00 A.M. on September 7, 2021 – at the time of the scheduled preliminary hearing.

The timing of the filing of the Notice is troublesome. On March 25, 2021, over five months ago, at the first hearing in this case, defense counsel asked that the Court delay setting a preliminary hearing, and instead requested that the Court set a status conference in order for defense counsel to determine “the nature and depth” of Defendant’s “mental illness.” At the time, the People assumed that defense counsel would make a good faith effort to assess Defendant and alert the Court and the People to any competency issues in a timely fashion. Instead, defense counsel has waited months,

only to raise the issue of competency at the eleventh hour, just before the preliminary hearing in this case.

The People are prepared to proceed forward with the preliminary hearing on September 7, 2021. Defense counsel and Defendant have had many weeks to review and analyze the evidence provided by the People, and Defense counsel and Defendant are presumably equally prepared to move forward with the September 7, 2021 hearing as no motion to continue has been filed. However, in an abundance of caution, the People feel it necessary to address the Notice and the fact that any Court action taken because of its filing should not derail the September 7, 2021 hearing.

While a defendant is incompetent to proceed, the defendant shall not be tried or sentenced, nor shall the court consider or decide pretrial matters that are not susceptible of fair determination without the personal participation of the defendant. However, a determination that a defendant is incompetent to proceed shall not preclude the furtherance of the proceedings by the court to consider and decide matters, including a preliminary hearing and motions, that are susceptible of fair determination prior to trial and without the personal participation of the defendant.

C.R.S. § 16-8.5-102 (1) (emphasis added). Of course, here, the Court has yet to make any competency determination about Defendant. But even if the Court were to find Defendant incompetent, the September 7, 2021 hearing could proceed as scheduled. Defendant is set for a preliminary hearing and a determination as to whether he is eligible for the setting of bond, pursuant to C.R.S. § 16-4-101. The September 7, 2021 hearing is precisely the type of hearing that may proceed forward, regardless of any allegations regarding Defendant's competency raised by defense counsel. *See People v. Liggett*, 490 P.3d 405, 412-13 (Colo. App. 2018) (confirming that even a finding of incompetence does not cease all pretrial proceedings under C.R.S. § 16-8.5-102; “[i]ndeed, those pretrial proceedings in which the personal participation of the defendant is not required and that are susceptible of fair determination without the defendant’s participation may proceed.”).

Furthermore, the vast majority of charges pending in this case fall under the Victims' Rights Act, codified under C.R.S. § 24-4.1-301, et. seq. The victims named in those counts, or those victims' representatives, are protected by the Victims' Rights Act. Pursuant to C.R.S. § 24-4.1-303(3), the People have an obligation to inform such victims of "any pending motion that may substantially delay the prosecution." Further, the People "shall inform the court of the victim[s'] position on the motion . . . [i]f the victim has objected, then the court . . . shall state in writing or on the record that the victim[s'] objection was considered and state the basis for the court's decision." C.R.S. § 24-4.1-303(3).

The victims and victims' families involved in this case are travelling from around the state and a handful are travelling across the country. They desire no further delay in the proceedings in this case and are prepared for the September 7, 2021 hearing to move forward. A few of these individuals have already paid for travel and lodging in order to be present for the September 7, 2021 hearing, and will travel over the weekend to ensure they arrive in Boulder on time. Due to the stress associated with preparing for travel and traveling to Boulder – from near and far – on or before September 7, 2021, and the amount of time expended and money spent by some individuals to attend the hearing, the People request that the Court clarify as soon as possible whether the preliminary hearing will proceed forward as scheduled.

WHEREFORE, the People request that the Court issue an order on or before September 3, 2021, clarifying whether or not the September 7, 2021 preliminary hearing will proceed forward as scheduled.

Respectfully submitted,

MICHAEL T. DOUGHERTY  
DISTRICT ATTORNEY

By:  
s/Adam D. Kendall  
Adam D. Kendall  
September 1, 2021

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CERTIFICATE OF SERVICE  
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I hereby certify that a true and correct copy of the above and foregoing served via the Colorado e-filing system on September 1, 2021, and addressed as follows:

Kathryn Herold  
Daniel King  
Sam Dunn  
Office of the Colorado State Public Defender – Boulder  
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s/Adam D. Kendall  
Adam D. Kendall