

OREGON PROSECUTORS WIRETAPPED DEFENSE INVESTIGATORS ON MOHAMED OSMAN MOHAMUD CASE

I'm working on a post on some interesting FISA moves the defense attorney for Reaz Qadir Khan, a Pakistani American indicted for material support for terrorism back in 2012, recently made. But before that, I wanted to note something revealed by documents in his prosecution that I wasn't aware of before.

The FBI wiretapped 2 conversations and one voicemail defense investigators for Mohamed Osman Mohamud had with Khan in June 2011 and then handed those recordings over to the prosecutor who prosecuted Mohamud and is prosecuting Khan.

In a filing in April, Khan's lawyers moved to obtain information about the government's minimization procedures. They pointed to 4 different privileged conversations that had been included in discovery:

- January 21, 2010 conversation between Khan and his immigration attorney seeking help because the FBI had told him he would be unable to fly overseas to visit his family
- June 9, 2011 phone interview of Khan by Public Defenders conducting an investigation on behalf of Mohamed Osman Mohamud
- June 14, 2011 phone

interview between Khan and Mohamud's investigators

- June 14, 2011 voice mail in which a Mohamud investigator asked Khan to look for something needed by the defense

While the filing doesn't identify Mohamud as the client in this case, the judge's subsequent order to unseal the exhibits pertaining to those calls so as to be handed over to the defendant in that case references Mohamud's docket.

Order as to Basim Qadir Khan: The Court having confirmed the consent of the government and Defendant Khan to release of certain documents to counsel for Defendant in United States v. Mohamud, 3:11-cr-00675-KJ, IT IS ORDERED that Exhibit C-11 to Motion for Disclosure of Monitoring of Privileged Communications, Maintenance Procedures & Filter Team Protocol [22](#) are UNSEALED solely for the purpose of release to Defendant Mohamud, 3:11-cr-00675-KJ. Said Defendant is to be provided with the audio recordings designated as Exs. C, D, and G, and the transcripts designated as Exs. D, F, and H in Defendant Khan's filing [22](#). (Ordered by Judge Michael W. Mosman, JDR) (Entered: 03/14/2013)

This also likely explains why, at the beginning of this case, the government submitted notice of a possible conflict involving Khan's lawyer Amy Baggio[Update, that may refer to Lawrence Matasar, who then represented Khan.] She used to work at the Public Defenders office (for all we know, she could have been recorded on those calls). Also, it may begin to explain why the government indicted Khan on December 27, 2012, just weeks before Mohamud's trial began, but waited to arrest him until March 5, 2013, after Mohamud's trial had concluded.

Mohamud was right in the middle of his fight to throw out his conviction because he was not noticed about the government's use of FAA at the time the judge issued this order on May 14, but I don't see any sign of it in his docket.

While all this doesn't explain what the tie between Khan and Mohamud is – in its response, the government actually claims it is “unrelated” and that it was not handed over to prosecutors until after the conclusion of Mohamud's case (which would mean it wasn't provided to the prosecutor before he indicted Khan) – it does make it clear that the government would share the privileged conversations of one defendant with that defendant's prosecutor via the

prosecution of another defendant under FISA.

In related news, the minimization procedures tied to FBI electronic surveillance released as part of the Yahoo dump have been on the friz since the release. Here is a copy, but the section on privileged communication is entirely redacted.

Update: In a follow-up, Khan's lawyer noted 3 more privileged conversations, all January 28, 2012 contacts between Khan and a T Nelson, who is probably Thomas Nelson, who was involved in – among other things – the al-Haramain case.