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Attorneys for Defendant Reaz Qadir Khan

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Portland Division

UNITED STATES OF AMERICA,

No. 3:12-CR-659-MO

Plaintiff,

v.

**DEFENDANT'S MOTION
REGARDING COURT RECUSAL**

REAZ QADIR KHAN,

Defendant.

The defendant, Reaz Qadir Khan, through counsel, files this motion at the request of the Court to identify issues which may arise and which may cause the Court to have

reason, *sua sponte*, to consider recusal from the case or recusal regarding a discreet issue.

The reason for the concern is this Court's appointment to the Foreign Intelligence Security Court which rules, *inter alia*, upon applications *ex parte* filed by the United States for searches and seizures of personal communications of United States citizens.

We have identified a number of areas which this Court may wish to consider in this case:

1. To the extent FISC has considered matters *ex parte* on issues of constitutional and statutory construction, will this Court view challenges in this adversary proceeding without prejudice;

2. Will this Court review anew issues such as separation of power where FISC has approved governmental programmatic surveillance;

3. Given that FISC has previously stated that "a generalized constitutional review, however, is not contemplated under Section 702(I)," does this Court agree that all aspects of the statute are now being reviewed in the first instance with no binding precedential authority from the FISC;

4. Has the FISC taken a position regarding third party disclosure and the Fourth Amendment that would foreclose this Court from accepting defense arguments regarding the appropriate scope of individuals' reasonable expectations of privacy in electronic communications;

5. Given the statutory reference to the Fourth Amendment in reviewing authorizations for programmatic surveillance, can this Court review anew the defense

assertion in an adversary proceeding that such surveillance violated the Fourth Amendment; and

6. Will this Court defer to Judge Collyer's opinion regarding metadata collection or listen anew to arguments pertaining to the constitutionality of such collection.

Dated this 5th day of May, 2014.

Respectfully submitted,

RANSOM BLACKMAN LLP

/s/ John S. Ransom _____

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Attorneys for Defendant

Reaz Qadir Khan

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANT'S MOTION REGARDING COURT RECUSAL on the following attorneys by electronic case filing a full and correct copy thereof on the 5th day of May, 2014.

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