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 UNITED STATES OF AMERICA  
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11 UNITED STATES DISTRICT COURT  
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 13 SOUTHERN DIVISION

14 UNITED STATES OF AMERICA, ) No. SA CR 09-28-CJC  
 15 )  
 Plaintiff, ) GOVERNMENT'S UNOPPOSED  
 16 ) EX PARTE APPLICATION FOR LEAVE OF  
 v. ) THE COURT TO DISMISS INDICTMENT  
 17 ) WITHOUT PREJUDICE PURSUANT TO FED.  
 AHMADULLAH SAIS NIAZI, ) R. CRIM. P. 48(a); DECLARATION OF  
 18 ) PATRICK R. FITZGERALD  
 aka Ahmadullah Khan, )  
 aka Ahmadullah Sais, )  
 19 aka Ahmadullah Sais Khan, ) Trial Date: November 2, 2010  
 aka Ahmadullah Khan Sais, ) 9:00 a.m.  
 20 )  
 Defendant. )  
 21 )  
 22 )

23 Plaintiff, United States of America, by and through its  
 24 counsel of record, the United States Attorney for the Central  
 25 District of California, hereby brings this unopposed ex parte  
 26 application for leave of the Court to dismiss the indictment in  
 27 this case without prejudice, pursuant to Federal Rule of Criminal  
 28 Procedure 48(a). This application is based upon the attached



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 In considering whether to grant the government leave to  
3 dismiss an indictment without prejudice pursuant to Rule 48(a),  
4 the Ninth Circuit has instructed that:

5 Separation of power concerns generally  
6 require a district court to defer to the  
7 government's decision to seek dismissal of a  
8 criminal charge because a denial of the  
9 motion would represent an intrusion upon  
10 prosecutorial prerogative. [Citation  
11 omitted]. The decision to dismiss an  
12 indictment implicates concerns that the  
13 Executive is uniquely suited to evaluate, and  
14 a district court should be reluctant to deny  
15 its request.

16 United States v. Gonzalez, 58 F.3d 459, 462 (9th Cir. 1995). See  
17 also id. at 461 ("In light of the history and purpose of Rule  
18 48(a), we have . . . required district judges entertaining such  
19 requests [for leave to dismiss] to grant considerable deference  
20 to the prosecutor"); id. ("the district court's discretion to  
21 deny leave is limited"); United States v. Garcia-Valenzuela, 232  
22 F.3d 1003, 1007 (9th Cir. 2000) ("a district court is limited in  
23 its ability to second-guess the government's decisions on whether  
24 and what to prosecute"); United States v. Hayden, 860 F.2d 1483,  
25 1487 (9th Cir. 1988) ("While the judiciary has been authorized to  
26 supervise prosecutorial decisions to dismiss, Rule 48(a) was not  
27 enacted for the purpose of usurping the traditional role of the  
28 prosecutor to determine whether to terminate a pending

1 prosecution"). This principle holds especially true in cases  
2 where, as here, the request for leave to dismiss is uncontested.  
3 See Gonzalez, 58 F.3d at 461 ("a district court may deny an  
4 uncontested request only 'in extremely limited cases . . . when  
5 the prosecutor's actions clearly indicate a betrayal of the  
6 public interest'" ) (quoting United States v. Welborn, 849 F.2d  
7 980, 983 n. 2 (5th Cir. 1988)).

8 Accordingly, based on Rule 48(a), the applicable case law,  
9 and the attached declaration, the government respectfully  
10 requests leave to dismiss the pending indictment in this case  
11 without prejudice.

