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                       UNITED STATES DISTRICT COURT
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                  FOR THE CENTRAL DISTRICT OF CALIFORNIA
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                             SOUTHERN DIVISION
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    UNITED STATES OF AMERICA,
                                 ) No. SA CR 09-28-CJC
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                                   GOVERNMENT'S UNOPPOSED
              Plaintiff,
                                   EX PARTE APPLICATION FOR LEAVE OF
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                                   THE COURT TO DISMISS INDICTMENT
                 v.
                                   WITHOUT PREJUDICE PURSUANT TO FED.
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                                 ) R. CRIM. P. 48(a); DECLARATION OF
    AHMADULLAH SAIS NIAZI,
     aka Ahmadullah Khan,
                                 ) PATRICK R. FITZGERALD
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     aka Ahmadullah Sais,
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     aka Ahmadullah Sais Khan,
                                 ) Trial Date:
                                                   November 2, 2010
     aka Ahmadullah Khan Sais,
                                                   9:00 a.m.
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              Defendant.
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         Plaintiff, United States of America, by and through its
    counsel of record, the United States Attorney for the Central
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    District of California, hereby brings this unopposed ex parte
    application for leave of the Court to dismiss the indictment in
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    this case without prejudice, pursuant to Federal Rule of Criminal
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    Procedure 48(a). This application is based upon the attached
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1	memorandum of points and auth	orities and declaration of Patrick
2	R. Fitzgerald, the files and	records in this case, and any such
3	additional evidence or argume	nt as may be presented at any
4	hearing on this application.	
5	Dated: September 28, 2010	Respectfully submitted,
6		ANDRÉ BIROTTE JR. United States Attorney
7		ROBERT E. DUGDALE
8		Assistant United States Attorney Chief, Criminal Division
9	·	Circi, Criminar Dividion
10		/s/
11		PATRICK R. FITZGERALD Assistant United States Attorney
12		Attorneys for Plaintiff
13		United States of America
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MEMORANDUM OF POINTS AND AUTHORITIES

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

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

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

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

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

DECLARATION OF PATRICK R. FITZGERALD

- I, Patrick R. Fitzgerald, do hereby declare:
- 1. I am an Assistant United States Attorney in the Central District of California. I have supervised the case of <u>United States v. Ahmadullah Sais Niazi</u>, SA CR 09-28-CJC. Defendant is charged in a five-count indictment with making false statements, procurement of naturalization unlawfully, use of a passport obtained by fraud, and perjury, in violation of 18 U.S.C. §§ 1001, 1425, 1546(a), and 1621.
- 2. Evidentiary issues, including the unavailability of an overseas witness, have arisen since the grand jury returned the indictment in this case, and as a result, the United States now seeks to dismiss the indictment without prejudice in the interest of justice.
- 3. On September 24, 2010, Assistant United States Attorney Judith Heinz spoke by telephone with defendant's counsel, Guy Iverson. Mr. Iverson informed her that the defendant does not oppose the government's <u>ex parte</u> application to dismiss the indictment in this case.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: September 28, 2010

_____/s/ PATRICK R. FITZGERALD