

Judge Richard A. Jones

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UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff

NO. CR11-0070RAJ

MOTION FOR INQUIRY REGARDING  
POTENTIAL CONFLICT OF INTEREST

v.

NOTED: August 22, 2014

ROMAN SELEZNEV,  
aka TRACK 2,  
aka ROMAN IVANOV,  
aka RUBEN SAMVELICH,  
aka nCuX  
aka Bulba  
aka bandysli64,  
aka smaus,  
aka Zagreb,  
aka shmak.

Defendant.

**I. INTRODUCTION**

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Norman M. Barbosa and Seth Wilkinson, Assistant United States Attorneys for said District, requests a hearing for the purpose of evaluating potential conflicts of interest between the defendant, ROMAN

1 SELEZNEV, and his retained attorneys Robert W. Ray and Ely Goldin of the law firm  
2 Fox Rothschild LLP, and to evaluate any proposed waiver of conflict. The conflict arises  
3 from the fact that Fox Rothschild previously represented a business known as Z Pizza,  
4 which is one of the victims of the charged scheme to defraud. Under these  
5 circumstances, a hearing is required pursuant to *Wood v. Georgia*, 450 U.S. 261, 269  
6 (1981) and *Quintero v. United States*, 33 F.3d 1133 (9th Cir. 1994).

7 Mr. Ray and Mr. Goldin filed applications with this Court to appear pro hac vice  
8 on August 13, 2014. The government is bringing this issue to the Court's attention  
9 immediately upon counsel's appearance because of the impact this issue may have on any  
10 further proceedings. A detention hearing is currently scheduled for August 15, 2014. In  
11 addition, until this matter is resolved, the parties will be unable to engage in substantive  
12 discussions regarding the exchange of discovery, scheduling, or trial.

## 13 II. PROCEDURAL HISTORY

14 In March 2011, a grand jury in this District returned a sealed Superseding  
15 Indictment charging defendant Roman Seleznev ("Seleznev") with numerous felonies  
16 stemming from his involvement in a computer hacking scheme, the goal of which was to  
17 steal credit card numbers which he then illegally resold on criminal internet forums that  
18 he operated. On July 5, 2014, while traveling in the Maldives, Seleznev was detained by  
19 local authorities, turned over to U.S. Secret Service agents, and transported to Guam.  
20 Seleznev made an initial appearance in the District of Guam on Monday July 7, 2014,  
21 before Magistrate Judge Joaquin V.E. Manibusan, Jr. At that appearance, Seleznev  
22 refused to acknowledge his court-appointed attorney from the Federal Public Defender's  
23 Office and requested private counsel. The court re-scheduled his initial appearance and  
24 Rule 5 identity hearing for July 22, 2014, to allow him time to retain private counsel.

25 Seleznev thereafter retained private counsel Robert W. Ray and Ely Goldin of the  
26 law firm Fox Rothschild LLP, as well as local counsel in Guam, G. Patrick Civile, from  
27 the firm of Civile & Tang. On July 18, 2014, Seleznev filed a motion to continue the  
28 Rule 5 hearing and requested a briefing schedule to address a motion to dismiss the

1 indictment based on lack of personal jurisdiction. Defense counsel argued that the  
2 circumstances of Seleznev's arrest constituted "outrageous government misconduct" and  
3 that the Guam court should dismiss the charges against him and/or divest itself of  
4 jurisdiction over the case. The government opposed the continuance and argued that the  
5 District of Guam had personal jurisdiction over Seleznev, but did not have jurisdiction to  
6 hear the motion to dismiss. The government argued that as a Rule 5 transferor court, the  
7 Guam court's role was limited to determining identity pursuant to Rule 5. The  
8 government asserted that any motions to dismiss should be raised once Seleznev was  
9 before this Court.

10 Over the following two weeks, the Guam court requested briefing from both  
11 parties regarding the District of Guam's jurisdiction over Seleznev, its jurisdiction to hear  
12 Seleznev's motion to dismiss, as well as the merits of that dismissal motion. On July 31,  
13 2014, following a hearing, Chief Judge Frances M. Tydingco-Gatewood found the  
14 District of Guam had personal jurisdiction over Seleznev and was not required to divest  
15 itself of jurisdiction, but lacked authority to rule on any motion to dismiss the indictment  
16 or prosecution. Accordingly, the court denied Seleznev's motion to dismiss. Judge  
17 Tydingco-Gatewood then proceeded to conduct a Rule 5 identity hearing that same day.  
18 At the conclusion of the Rule 5 hearing, the Court ordered Seleznev removed to the  
19 Western District of Washington. On August 8, 2014, defendant made his initial  
20 appearance in the Western District of Washington and was arraigned on the Superseding  
21 Indictment. Trial is currently scheduled for October 6, 2014.

### 22 III. SUMMARY OF FACTS

23 The Superseding Indictment details a bank fraud scheme in which Seleznev is  
24 charged with hacking into retail point of sale systems and installing malicious software  
25 on the systems to steal credit card data. The charges in the indictment include five counts  
26 of bank fraud, eight counts of intentionally causing damage to a protected computer,  
27 eight counts of obtaining information from a protected computer, one count of possession  
28 of fifteen or more unauthorized access devices (stolen credit card numbers), two counts

1 of trafficking in unauthorized access devices, and five counts of aggravated identity theft.  
2 The illegal hacking outlined in the indictment occurred between October 2009 and  
3 February 2011.

4 The indictment alleges that Seleznev created and operated infrastructure to  
5 facilitate the theft and sales of credit card data including servers located in the United  
6 States, Russia and the Ukraine. This infrastructure included servers that Seleznev used to  
7 host malware designed to hack into victim systems and steal credit card data, other  
8 servers used to receive and compile the stolen credit card data, and additional servers he  
9 used to host criminal internet forums, known as carding forums, where he would market  
10 the stolen credit card data. The indictment alleges that Seleznev utilized this  
11 infrastructure and other hacking tools to identify and attack vulnerable credit card  
12 processing systems throughout the world, including systems in the Western District of  
13 Washington. According to the allegations in the indictment, once Seleznev identified a  
14 vulnerable system, he would install malware on the system that would automatically  
15 collect credit card data and transmit that data to servers he controlled. The systems  
16 Seleznev attacked included point of sale systems at hundreds of small retail businesses  
17 throughout the United States. Many, if not most, of the victims are pizza restaurants.

18 On August 4, 2014 while preparing for Seleznev's arrival in the Western District  
19 of Washington, the undersigned was reviewing evidence collected in the case and  
20 discovered that Fox Rothschild, the same law firm representing Seleznev, also  
21 represented a restaurant chain known as "Z Pizza" in connection with Z Pizza's role as a  
22 victim of the scheme to defraud charged in the Superseding Indictment. During the  
23 investigation of this case, agents identified at least fourteen Z Pizza locations that  
24 Seleznev infected with his malware. Seleznev thereafter used the malware to steal  
25 thousands of credit card numbers used at the Z Pizza restaurants. The case agent began  
26 contacting Z Pizza locations in February 2011, to inform them that they were the subject  
27 of a data breach. Records indicate that in May 2011, attorney Amy Purcell of Fox  
28 Rothschild LLP notified the agent that she was representing Z Pizza in connection with

1 the breach and that Z Pizza would be posting a notice at their restaurants to inform  
2 customers that credit cards used between September 2010 and January 2011 may have  
3 been compromised.

4       Upon discovering the potential conflict of interest, the undersigned contacted  
5 defense counsel Robert W. Ray and alerted him to the potential conflict raised by Fox  
6 Rothschild's representation of Z Pizza. Defense counsel investigated and notified the  
7 undersigned that he did not believe a conflict exists because the matter involving Z Pizza  
8 is closed. He further indicated that he would screen himself off from any contact with the  
9 attorneys who worked on the Z Pizza matter. Nonetheless, defense counsel agreed that  
10 this matter should be brought to the Court's attention for the purposes of evaluating the  
11 potential conflict and examining any proposed waivers of the conflict.

12       Although Z Pizza is not specifically named in the indictment, they are a significant  
13 victim of the charged scheme to defraud. It is likely that the government may need to  
14 present evidence specifically related to the data breaches at Z Pizza locations as part of  
15 the government's case in chief. The evidence the government intends to present at trial  
16 will include evidence that Seleznev is responsible for the data breaches at Z Pizza and  
17 sold credit card data from the Z Pizza data breaches on his carding forums Track2.name  
18 and Bulba.cc. The government has not determined whether it may seek to call Z Pizza  
19 representatives as witnesses in this case. Such testimony could include testimony from  
20 employees of Z Pizza as well as testimony from computer forensics examiners who may  
21 have reviewed the point of sale systems at Z Pizza locations on behalf of the business.

22       Companies that suffer a data breach such as the data breaches that victimized  
23 Z Pizza and its customers are typically required by the major credit card companies to  
24 undergo a computer forensics examination. In many instances, businesses will retain a  
25 computer forensics firm directly to conduct such an examination. In other instances,  
26 businesses may retain legal representation that subsequently retains the computer  
27 forensics firm to examine the client's computer systems. The government will likely  
28 need to consult with Z Pizza's counsel to determine what, if any, examinations may have



1 from an actual conflict, a potential conflict, or no genuine conflict at all. *Id.* When a  
2 possible conflict has been entirely ignored, reversal of a subsequent conviction is  
3 automatic. *Id.* at 144.

4 The Court may not entirely ignore a possible conflict of interest. *United States v.*  
5 *Levy*, 25 F.3d 146, 153 (2d Cir. 1994). The Court has a duty to inquire into problems  
6 with counsel when they are first raised. *Plumlee v. Masto*, 512 F.3d 1204 (9th Cir. 2008)  
7 (citing *Schell v. Witek*, 218 F.3d 1017, 1025-1026 (9th Cir. 2000)). An attorney's good  
8 faith in such a situation is not an issue, only whether or not a possible conflict of interest  
9 exists. *Rogers*, 209 F.3d at 145. Thus, the Court must initially inquire as to whether an  
10 actual conflict of interest or potential conflict of interest exists. Once the Court makes  
11 this initial determination, it must then analyze and evaluate any conflict to ensure that it is  
12 either eliminated or waived. *Id.* at 146.

13 In evaluating Sixth Amendment claims, the Supreme Court has held that "the  
14 appropriate inquiry focuses on the adversarial process, not on the accused's relationship  
15 with his lawyer as such." *United States v. Cronin*, 466 U.S. 648, 657, n.21 (1984). Thus,  
16 while the right to select and be represented by one's preferred attorney is comprehended  
17 by the Sixth Amendment, the essential aim of the Amendment is to guarantee an effective  
18 advocate for the criminal defendant, rather than to ensure that a defendant will inexorably  
19 be represented by the lawyer whom he prefers. *See Morris v. Slappy*, 461 U.S. 1, 13-14  
20 (1983); *Jones v. Barnes*, 463 U.S. 745 (1983). The Court also held that a presumption in  
21 favor of petitioner's counsel of choice may be overcome by a demonstration of actual  
22 conflict or a serious potential for conflict. *Wheat v. U.S.*, 486 U.S. 153, 164 (1988).

23 To determine whether an attorney suffers from a disqualifying conflict of interest,  
24 "the Court first refers to the local rules regulating the conduct of members of its bar."  
25 *FMC Tech., Inc. v. Edwards*, 420 F. Supp.2d 1153, 1157 (W.D. Wash. 1997). All  
26 attorneys appearing before this Court, including attorneys admitted *pro hac vice*, must  
27 comply with "[t]he Washington Rules of Professional Conduct . . . , as promulgated,  
28 amended, and interpreted by the Washington State Supreme Court, unless such

1 amendments or additions are specifically disapproved by the court, and the decisions of  
 2 any court applicable thereto.” CR 83.3(a)(2); *see also* CR 83.1(d); CrR 1(a).  
 3 Accordingly, the Washington Rules of Professional Conduct (“RPC”) govern the Court’s  
 4 conflict analysis. *FM Tech.*, 420 F. Supp.2d at 1157.

5 **B. Fox Rothschild’s Representation of Z Pizza in the Same Matter Creates a**  
 6 **Potential Conflict of Interest Requiring an Inquiry by the Court.**

7 In the present case, sufficient evidence exists such that the Court should engage in  
 8 an inquiry of Seleznev and his counsel as to whether, and to what extent, a conflict of  
 9 interest exists. The government is concerned about the possibility that defense counsel  
 10 may have a conflict of interest in representing both Z Pizza and Seleznev. This concern  
 11 arises regardless of whether Z Pizza is characterized as a current or former client of Fox  
 12 Rothschild. In either scenario, under the relevant provisions of Washington’s Rules of  
 13 Professional Conduct, Fox Rothschild cannot represent Seleznev if his interests are  
 14 “directly adverse” to Z Pizza unless both Seleznev and Z Pizza make an informed waiver  
 15 of the conflict.

16 *A. Any Potential Conflict of Attorney Amy Purcell Is Imputed To Attorneys*  
 17 *Robert W. Ray and Ely Goldin.*

18 As an initial matter, Fox Rothschild attorney Amy Purcell’s potential conflict of  
 19 interest as counsel for Z Pizza is imputed to all other attorneys in the firm, including  
 20 Attorney’s Robert W. Ray and Ely Goldin. Rule 1.10 of the Washington Rules of  
 21 Professional Conduct – Imputation of Conflict of Interest: General Rule – provides that:

22 Except as provided in paragraph (e), while lawyers are associated in a firm,  
 23 none of them shall knowingly represent a client when any one of them  
 24 practicing alone would be prohibited from doing so by Rules 1.7 or 1.9,  
 25 unless the prohibition is based on a personal interest of the disqualified  
 lawyer and does not present a significant risk of materially limiting the  
 representation of the client by the remaining lawyers in the firm.

26 Therefore, Purcell’s representation of Z Pizza and the potential conflict of interest that  
 27 representation creates in representing Seleznev is imputed to attorneys Ray and Goldin,  
 28 unless the exception outlined in RPC 1.10(e) applies. It does not.



1           RPC 1.10(e) provides that when a conflict arises under RPC 1.9, *i.e.*, involves a  
2 potential conflict with a former client, “and arises out of the disqualified lawyer’s  
3 association with a prior firm,” that conflict will not be imputed to other lawyers in the  
4 disqualified lawyer’s current firm, thereby obviating any need to obtain conflict waivers,  
5 if certain measures are taken to screen out the disqualified lawyer from the current  
6 matter. However, by its terms, the “Chinese Wall” envisioned by RPC 1.10(e) may only  
7 be utilized where the conflict arises from a firm member’s representation of a former  
8 client while associated “with a prior firm.” Even assuming Purcell’s representation of Z  
9 Pizza involved a former client, that representation occurred while Purcell was associated  
10 with Fox Rothschild — the same firm currently representing Seleznev — so RPC 1.10(e)  
11 has no present application. Accordingly, Purcell’s potential conflict must be imputed to  
12 all attorney’s associated with Fox Rothschild, including Ray and Goldin, and the impact  
13 of that potential conflict must be measured by RPC 1.7 or RPC 1.9, depending on  
14 whether Z Pizza is a current or former client of Fox Rothschild. *See Avocent Redmond*  
15 *Corp. v. Rose Elec.*, 491 F. Supp.2d 1000, 1008-09 (W.D. Wash. 2007).

16           *B.     Regardless Of Whether Z Pizza Is A Current Or Former Client Of Fox*  
17           *Rothschild, The Potential Conflict Presented By This Case Must Be Waived*  
18           *By Both Z Pizza and Seleznev.*

19           Washington’s conflict of interest provisions are set out in RPC 1.7, which applies  
20 to conflicts where both clients are current clients, and RPC 1.9, which applies where one  
21 client is a former client. While it is unclear whether Z Pizza is a current client or former  
22 client of Fox Rothschild, the pertinent analysis is the same under both rules. Both rules  
23 provided that, if the two clients are adverse, representation is permissible only if both  
24 clients waive the conflict. RPC 1.7(a) states as follows:

25           (a)     Except as provided in paragraph (b), a lawyer shall not represent a  
26           client if the representation involves a concurrent conflict of interest. A  
27           concurrent conflict of interest exists if:

28           (1)     the representation of one client will be directly adverse to another  
              client; or

1 (2) there is a significant risk that the representation of one or more clients  
 2 will be materially limited by the lawyer's responsibilities to another client, a  
 3 former client or a third person or by a personal interest of the lawyer.

4 This rule is based on a lawyer's fundamental duty of loyalty, "which prohibits  
 5 undertaking representation directly adverse to [a] client without that client's informed  
 6 consent." Comment 6 to RPC 1.7

7 Similarly, RPC 1.9(a), which governs conflicts involving a former client, states as  
 8 follows:

9 A lawyer who has formerly represented a client in a matter shall not  
 10 thereafter represent another person in the same or a substantially related  
 11 matter in which that person's interests are materially adverse to the interests  
 12 of the former client unless the former client gives informed consent,  
 13 confirmed in writing."

14 Thus, the relevant inquiry under RPC 1.7(a)(1) and RPC 1.9(a) is whether the interests of  
 15 Seleznev and Z Pizza are directly (RPC 1.7) or materially (RPC 1.9) adverse.

16 Here, the parties' interests appear to be adverse under either standard because  
 17 Z Pizza was a victim of Seleznev's criminal scheme.<sup>1</sup> The adversity of their positions is  
 18 illustrated by two examples. The first is the fact that any restitution flowing from a  
 19 conviction of Seleznev would benefit Z Pizza. If Seleznev is convicted, he may be  
 20 ordered to pay restitution to all victims of the scheme to defraud, which would include  
 21 Z Pizza. Under those circumstances, Fox Rothschild would represent clients on both  
 22 sides of the restitution order: the Court would likely order a restitution payment from one  
 23 of Fox Rothschild's clients (Seleznev) to another Fox Rothschild client (Z Pizza). Fox  
 24 Rothschild would, in its role as Seleznev's counsel, find itself in the position of  
 25 advocating against a restitution order that would benefit its other client, Z Pizza.

26 As another example, Fox Rothschild may be required to cross-examine its own  
 27 client. In the event the case goes to trial and Z Pizza is called as a government witness,

28 <sup>1</sup> This also shows that, assuming Z Pizza is a former client, Fox Rothschild's representation of Seleznev and Z Pizza involves "the same or a substantially related matter" within the meaning of RPC 1.9(a).

1 Z Pizza may testify regarding the computer hacking and credit card fraud at issue in this  
2 case, their knowledge of how that malware operated and impacted their business, and  
3 how it was brought to their attention. Z Pizza would then be subject to cross examination  
4 by Fox Rothschild about matters on which Fox Rothschild represented Z Pizza. This  
5 would make Fox Rothschild's representation of Seleznev directly adverse to Z Pizza and  
6 result in an actual conflict under RPC 1.7(a)(1) and RPC 1.9(a). *See* Comment 6 to RPC  
7 1.7 ("a directly adverse conflict may arise when a lawyer is required to cross-examine a  
8 witness who appears as a witness in a lawsuit involving another client").

9 In addition to the concerns raised above—which involve Fox Rothschild's duties  
10 of loyalty to its clients—the representation also raises issues about the firm's duty of  
11 confidentiality. Fox Rothschild attorneys may have learned confidential information in  
12 representing Z Pizza that the firm would be prohibited from using or disclosing in cross  
13 examining a Z Pizza witness (or in any other context) because the firm and its lawyers  
14 owe a duty of confidentiality to Z Pizza. *See* RPC 1.6(a) ("A lawyer shall not reveal  
15 information relating to representation of a client unless the client gives informed consent,  
16 the disclosure is impliedly authorized in order to carry out the representation or the  
17 disclosure is permitted by paragraph (b)"). "The confidentiality rule . . . applies not only  
18 to matters communicated in confidence by the client but also to all information relating to  
19 the representation, whatever its source." Comment 3 to RPC 1.6. Therefore, Fox  
20 Rothschild would be prohibited from using any computer forensics examinations  
21 commissioned by the firm on behalf of their client Z Pizza.

22 **C. If Seleznev and Z Pizza Both Waive The Conflict of Interest, The Court Must**  
23 **Determine Whether The Conflict is Waivable.**

24 Although RPC 1.7 and RPC 1.9 permit Fox Rothschild and its attorneys to  
25 continue to represent both clients pursuant to informed, written consent, the Court should  
26 review any proposed consent from Seleznev and Z Pizza and confirm that each has been  
27 sufficiently informed of the potential conflict. The Court may wish to assign conflicts  
28 counsel to discuss the potential conflict with Seleznev.

1 While consent and waiver from both clients appears necessary at a minimum, *see*  
2 RPC 1.7(b)(4), 1.9(a), and 1.10(c), consent and waiver may not be sufficient to remedy a  
3 concurrent conflict of interest. Pursuant to RPC 1.7(b), “notwithstanding the existence of  
4 a concurrent conflict of interest under paragraph (a),” a lawyer may represent a client if,  
5 in addition to informed consent from both clients:

6 The representation does not involve the assertion of a claim by one client  
7 against another client represented by the lawyer in the same litigation or  
8 other proceeding before a tribunal.”

9 RPC 1.7(b)(3). In the instant case, Z Pizza as a victim of Seleznev’s hacking scheme is  
10 entitled to present a claim for restitution if Seleznev is convicted of the charges in the  
11 Superseding Indictment. Therefore, even with consent from both clients, Fox Rothschild  
12 may not be permitted to continue representing both clients if Z Pizza is currently a client  
13 of the firm.

14 The Court should inquire into whether Fox Rothschild has complied with RPC  
15 1.7(b) or 1.9(a) (as applicable), and whether Seleznev can waive the conflict. Under Rule  
16 1.7(b), some conflicts may not be resolved by consent. *See* Comment 14 to RPC 1.7  
17 (“some conflicts are nonconsentable”). Moreover, even if a conflict is properly  
18 consented to under RPC 1.7 or RPC 1.9, representation of a client may nevertheless  
19 violate the Sixth Amendment. *See United States v. Schwartz*, 283 F.3d 76, 94 (2d Cir.  
20 2002) (waiver by defendant at hearing does not defeat defendant’s ineffective assistance  
21 of counsel claim; “the actual conflict that Schwartz’s attorney faced was unwaivable.”)

22 The Court should also consider whether defense counsel’s potential conflicts  
23 constitute unwaivable, per se violations of the Sixth Amendment. In order to establish a  
24 per se conflict of interest, the Court must find a conflict so severe that it is deemed a  
25 per se violation of the Sixth Amendment. *See United States v. Williams*, 372 F.3d 96,  
26 102 (2d Cir. 2004). Per se conflicts of interest are unwaivable and do not require a  
27 showing that the defendant was prejudiced by the representation. *Id.*

1 Trial courts presented with a conflict of interest have an affirmative duty to protect  
2 the defendant's rights. *Glasser v. United States*, 315 U.S. 60 (1942). The Courts  
3 "indulge every reasonable presumption against the waiver of fundamental rights." *Id.* at  
4 70. Waivers relating to counsel "must not only be voluntary, but must also constitute a  
5 knowing and intelligent relinquishment or abandonment of a known right or privilege."  
6 *Edwards v. Arizona*, 451 U.S. 477, 482 (1981). The Supreme Court held that such a  
7 relinquishment or abandonment is a matter which depends in each case "upon the  
8 particular facts and circumstances surrounding that case, including the background,  
9 experience, and conduct of the accused." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

10 Even when a defendant is willing to waive a conflict of interest, a court has an  
11 independent duty to balance the right to counsel of choice with the broader interests of  
12 judicial integrity. *United States v. Vasquez*, 966 F.2d 254, 261 (7th Cir. 1992). The court  
13 is required to take action to protect the defendant's Sixth Amendment right to effective  
14 assistance of counsel unless, after inquiry, the court believes that a conflict of interest is  
15 unlikely to arise. *Id.* Further, a trial court should enforce the ethical rules governing the  
16 legal profession with respect to conflict-free representation, regardless of any purported  
17 waiver by the defendant, when necessary to protect the important candor that must exist  
18 between a client and his attorney and to engender respect for the court in general. *United*  
19 *States v. Moscony*, 927 F.2d 742, 749 (3d Cir. 1991).

20 A district court has discretion to limit the exercise of the right to counsel of choice  
21 when insistence upon it would disproportionately disadvantage the Government or  
22 interfere with the ethical and orderly administration of justice. *United States v.*  
23 *Cortelleso*, 663 F.2d 361, 363 (1st Cir. 1981). Even if Seleznev is willing to waive the  
24 potential conflict, this Court, in the interests of justice and judicial integrity, should  
25 consider whether disqualification constitutes the only way to protect Seleznev's Sixth  
26 Amendment right to the effective, conflict-free, assistance of counsel.

1 **V. Conclusion**

2 The Court should inquire as to whether a conflict of interest exists. The Court  
3 should timely inquire so that the parties can either move forward with trial preparation  
4 and plea negotiations, or move for withdrawal of counsel.

5 DATED this 13<sup>th</sup> day of August, 2014.

6 Respectfully submitted,

7 JENNY A. DURKAN  
8 United States Attorney

9 /s/ Norman M. Barbosa  
10 NORMAN M. BARBOSA  
11 Assistant United States Attorney  
12 United States Attorney's Office  
13 700 Stewart Street, Suite 5220  
14 Seattle, WA 98101  
15 Telephone: (206) 553-7970  
16 E-Mail: [Norman.Barbosa@usdoj.gov](mailto:Norman.Barbosa@usdoj.gov)

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney of record for the defendant.

s/Janet K. Vos  
JANET K. VOS  
Paralegal Specialist  
United States Attorney's Office  
700 Stewart Street, Suite 5220  
Seattle, Washington 98101-1271  
Phone: (206) 553-5041  
Fax: (206) 553-0755  
E-mail: [Janet.Vos@usdoj.gov](mailto:Janet.Vos@usdoj.gov)