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January 10, 2014

Patricia S. Connor, Clerk
United States Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219-3517

Re: 13-4625, *In re: Under Seal*

Dear Ms. Connor:

I write to bring to the Court's attention two published opinions of this Court that have been issued since briefing in the above-captioned matter concluded.

First, in their opening brief, Appellants argued that the warrant issued below was invalid because the information sought was not "fruits, instrumentalities, or evidence" of any crime. (Lavabit Opening Br. at 21-24.) In response, the government argued that the encryption keys listed in the warrant were lawfully seized as property involved in crime. (Gov't Br. at 34-36.) On December 24, 2013, in *United States v. Dargan*, this Court upheld the seizure of a purchase receipt from a suspect's residence as relevant evidence in a bank robbery investigation. Slip Op. at 9-11. This case provides additional support for the government's argument that the Fourth Amendment does not prohibit the seizure of items that alone are not direct evidence of an element of a crime. Moreover, the Court's reasoning that warrants should be interpreted in a common sense matter to encourage the government to seek warrants when intruding into constitutionally protected areas, *Dargan*, slip op. at 8, is equally applicable here.

Second, to succeed on their appeal, Appellants must identify error committed by the District Court. (Gov't Br. at 16-17.) On January 8, 2014, in *United States v. Chinua Shepperson*, this Court held a district court is not required to raise, *sua sponte*, statutory claims of a criminal

defendant, even when the defendant is charged with a death-eligible offense. (Slip Op. at 6-8.) Here, Appellants seek to invalidate the Pen Register Order and Search Warrant based on issues they failed to raise before the district court. As *Shepperson* indicates, the district court's failure to consider those issues was not error.

Sincerely,

Dana J. Boente
Acting United States Attorney

By: _____/s/_____
Andrew Peterson
Assistant United States Attorney