



Messrs. Commons and Thompson have also filed their MoUs electronically through the Court's ECF system.

## **II. Unclassified Discovery**

Since the last Status Hearing, the United States has made three separate productions of unclassified material to the defense pursuant to its disclosure obligations and the defense's requests for discovery. Specifically, the United States has produced 126 pages of documents collected during the investigation, including emails to or from Mr. Kim, other correspondence to or from Mr. Kim, Classified Information Nondisclosure Agreements signed by Mr. Kim (marked unclassified), subscriber records for various telephone numbers, IP address information for one of Mr. Kim's email accounts, Department of State (DoS) badge records, and an unclassified FBI 302 of telephone communication with Mr. Kim. As for electronic media, the United States has produced a CD containing .wav files of recordings related to telephone numbers relevant to the government's investigation. In response to a specific defense request, the United States has also produced a CD containing the badge records for individuals who were employees, contractors, and/or detailees to DoS's Bureau of Verification, Compliance, and Implementation (now the Bureau of Arms Control, Verification, and Compliance) for the period March 1, 2009, through September 30, 2009.

## **III. Classified Discovery**

Since the last Status Hearing, the United States has made an additional production of classified material. The United States has produced classified FBI 302s (and underlying agents' notes) for the FBI interviews of Mr. Kim on September 24, 2009, and March 29, 2010, related classified documents from those interviews, and Sensitive Compartmented Information

Nondisclosure Agreements (marked classified) signed by Mr. Kim. Much of this material is marked at the TOP SECRET//SCI level.

The United States is still in the process of retrieving, reviewing and preparing for production in classified discovery to the defense of other classified materials regarding individuals identified in this investigation as having accessed the classified national defense information at issue prior to the unauthorized disclosure charged in the Indictment. The United States expects these classified materials to include electronic audit material from multiple classified computer systems. The United States expects to produce these classified materials to the defense notwithstanding the fact that the government believes that such production would exceed its discovery obligations at this time. The United States expects to produce this material on a rolling basis, with the first production to occur prior to the next Status Hearing scheduled for March 9, 2011.

Also prior to the next Status Hearing, the United States expects to produce to the defense photographs taken and photocopies of items viewed during three separate entries of Mr. Kim's DoS office in August and September 2009. The majority of these items will be produced in classified discovery.

As described more fully in the last Joint Status Report, the Parties reached a written agreement concerning the review for classification and discoverability of voluminous classified electronic records collected in this case. Pursuant to that agreement, the defense submitted electronic search terms to an Intelligence Community filter team to run against the classified electronic media. The filter team has just completed its review of all but one category of classified electronic media. The filter team still has to complete its review of the approximately 3,450 screenshots of Mr. Kim's usage of DoS's SECRET computer system, which cannot be

done through the use of electronic searches. The Parties discussed whether the prosecution team should begin its review of the filtered classified electronic media now. The defense requested that the prosecution team wait until the entire filter review is complete, and the prosecution team does not object to this request. The Intelligence Community filter attorney has advised the prosecution team that the filter process should be completed in approximately 30 days. Because the prosecution team has not begun its review of the filtered classified electronic media, it cannot reliably estimate how long it may take to review that material for classification and discoverability. In any event, before any otherwise discoverable material could be produced to the defense, all such classified material would have to be submitted to the pertinent equity-holders in the Intelligence Community.

Accordingly, the Parties request that this Court set the next status in this matter in 60 days. The Parties believe that the scheduling of discovery motions and/or CIPA proceedings should follow completion of the review of the classified electronic media.

#### **IV. Witness Issues**

##### **a. Fact Witnesses**

Defense counsel has attempted to interview former government colleagues of Mr. Kim and has been asked by the Department of State (DoS) to provide DoS with a Touhey regulation request to have that done. Defense counsel has done so. Consistent with the last Joint Status Report and immediately following the last Status Hearing, the prosecution team reiterated to the Department of State the position of the Department of Justice (DOJ), namely that DOJ has no objection to defense counsel's pending request to have access to, and to interview, such DoS witnesses.

b. Expert Witnesses

Neither Party has indicated a decision to use any expert witnesses nor has identified any such witnesses. Defense counsel will seek a procedure where potential expert witnesses may have access to the classified materials in the case.

**V. Motions**

a. Dispositive Motions

The defense filed four pretrial motions on January 31, 2011. The United States is filing its consolidated response to the defense's motions today, March 2, 2011. The defense's replies are due to be filed on March 16, 2011.

The Court granted the Unopposed Motion of the United States to file a consolidated response in excess of 45 pages.

b. Discovery Motions

The Parties believe that discovery motions should follow completion of classified discovery in this case.

**VI. CIPA**

Once the United States has completed classified discovery, the Parties can address with

the Court the various CIPA procedures and schedule for addressing classified material.

Dated: March 2, 2011

Respectfully submitted,

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2011, I caused a true and correct copy of the foregoing  
be served via the Court's ECF filing system to all counsel of record in this matter.

/s/  
Jonathan M. Malis  
Assistant United States Attorney