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U.S. Department of Justice
600 E Street NW
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Ron and all:

We write to ask you to join with us to seek the immediate release of our client, Stephen Kim. Mr. Kim has served eight of his thirteen month sentence, but circumstances merit his release now. Mr. Kim admitted to providing national defense information to a person without authorization to receive it. Whatever else can be said about the incident, it is clear Mr. Kim was working on and hoping to have others understand the nature of the threat of North Korea-- a threat which continues today and is as bad or worse than when the incident occurred.

When the incident arose and we discussed the case and negotiations for a resolution occurred, we suggested a misdemeanor for the mishandling or retention of classified information. You rejected that out of hand, saying that a large reason for your position was that Mr. Kim lied to FBI agents when he was confronted with the issue of his dealings with the Fox News reporter. You also indicated that, despite Mr. Kim's stellar record and obvious concern for America's foreign policy, you thought his motives were less policy-oriented than we had argued.

We write now because of the agreement the Department of Justice has recommended to resolve the investigation of retired General David Petraeus. General Petraeus is admitting to disclosing NDI that was at least as serious and damaging to national security as anything involved in Mr. Kim's case. Specifically, General Petraeus disclosed notebooks containing "classified information regarding the identities of covert officers, war strategy, intelligence capabilities and mechanisms, diplomatic discussions, quotes and deliberative discussions from high-level National Security Council meetings, and [General Petraeus's] discussions with the President of the United States of America." In addition, as to motive, General Petraeus disclosed these notebooks – which he acknowledged contained "highly classified" and "code word" information – to his mistress, who was preparing his personal biography. There was not even the

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pretense that his actions were for anything but personal, very personal, reasons. In addition, General Petraeus's factual statement admits that he lied about his conduct when questioned by the FBI, denying that he had retained classified information or ever provided any classified information to his biographer. The agreed-upon plea states that General Petraeus knew these statements were false when they were stated.

Despite the nature of the information and these intentional false statements, the Department is not only permitting but is actively recommending that General Petraeus plead guilty to a misdemeanor. The Department agreed to recommend a sentence of two years' probation and a fine.

The decision to permit General Petraeus to plead guilty to a misdemeanor demonstrates more clearly than ever the profound double standard that applies when prosecuting so-called "leakers" and those accused of disclosing classified information for their own purposes. As we said at the time of Mr. Kim's sentencing, lower-level employees like Mr. Kim are prosecuted under the Espionage Act because they are easy targets and lack the resources and political connections to fight back. High-level officials (such as General Petraeus and, earlier, Leon Panetta) leak classified information to forward their own agendas (or to impress their mistresses) with virtual impunity.

The resolution the Department is recommending for General Petraeus is supported by his record of service and the facts in the plea. So too would have been that result for Mr. Kim. We know that you can come up with any number of factors (as lawyers are trained to do) to distinguish the two cases. However, that is just an exercise in lawyering. At the bottom line, the activities are the same. Even if there was a real difference, the reasons that you provided to refuse our misdemeanor offer were grounded in motive and lying to the FBI. There is no difference between the two cases in that respect (if anything, General Petraeus's motive was far less noble).

It is too late for us to undo the plea and seek the misdemeanor that Mr. Kim should have been offered. However, some justice and fairness can occur, even at this late date, by our at least joining to end his incarceration now. This uneven and disparate treatment can, at least in one case, be somewhat rectified. This is a serious request. We start with you as the Office and attorneys involved. But, if you will not agree, we would like to raise it with the Deputy Attorney General and the Attorney General as well. It is a matter of that importance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Abbe David Lowell', written in a cursive style.

Abbe David Lowell