



## **II. Unclassified Discovery**

Since the last Status Hearing, the United States has made an additional production of unclassified material to the defense pursuant to its disclosure obligations and the defense's requests for discovery. Specifically, the United States produced approximately 7 pages of unclassified material, including an FBI 302, underlying agent's notes, and phone logs. In total, the United States has produced approximately 15,770 pages of unclassified material in this matter. With respect to much of this material, the United States has produced it to the defense notwithstanding the fact that the government believes that such production exceeds its discovery obligations at this time.

## **III. Classified Discovery**

Since the last Status Hearing, the United States has made an additional production of classified material, totaling approximately 30 pages including classified FBI 302s, underlying agents' notes, and classified phone records. In total, the United States has produced approximately 2,889 pages of classified discovery in this matter. The Parties note that some of the newly produced classified material was produced to the defense in response to requests set forth in the defense's most-recent discovery letter, dated October 6, 2011. With respect to much of this material, the United States has produced it to the defense notwithstanding the fact that the government believes that such production exceeds its discovery obligations at this time.

## **IV. Meet-and-Confer Sessions**

The Parties continue to engage in meet-and-confer sessions to discuss the production of additional material in responsive to the defense's discovery requests and to narrow any issues for the Court's resolution. As described in the last Joint Status Report and at the last Status Hearing, the Parties agreed that the defense would provide the United States with a revised discovery

letter that would supercede its October 6, 2011 letter, with the goal of memorializing the Parties' progress to date in satisfying or narrowing the defense's requests. Further, the Parties agreed to continue to conduct meet-and-confer sessions, as necessary, to review a draft of the defense's revised letter to see if any further resolution of the issues could be accomplished. The defense provided the draft revised discovery letter to the United States on February 9, 2012. As reflected in the defense's February 9th letter, the Parties have resolved or narrowed approximately 50 of the approximately 100 defense requests contained in the defense's October 6th letter.

Because of scheduling difficulties, the Parties have only met once to discuss that draft revised letter, on March 9, 2012. At this session the Parties resolved or narrowed additional defense requests. The Parties are scheduled to meet again on March 19, 2012. As with prior meet-and-confer sessions, this most-recent session was held in the U.S. Attorney's Office's SCIF and lasted approximately two hours.

Although the Parties recognize that this is a time-consuming process, the Parties continue to believe that the meet-and-confer sessions have been very productive, both in elucidating the grounds for the defense requests and affording the Parties an opportunity to resolve or narrow the discovery issues in dispute. This progress is reflected in the defense's February 9th letter.

As the meet-and-confer process has continued, the United States has also engaged with the relevant Intelligence Community members concerning their equities that are implicated by the outstanding defense requests, and has made follow-up requests for information. The United States anticipates that these requests will result in additional disclosures to the defense. Again, as most of the information that the defense is seeking is classified, the production of that material to the defense will be both complicated and time consuming.

The Parties respectfully suggest that the process described herein is the most appropriate and orderly manner to address the sensitive equities raised by the defense's discovery requests. The Parties believe that the orderly completion of the process ultimately will serve to preserve judicial resources by sharpening the remaining issues for judicial resolution. Until the Parties have completed this process, it is uncertain whether the outstanding discovery requests may be susceptible to resolution without the intervention of the Court, or whether a briefing schedule for discovery motions is appropriate. Therefore, the Parties request that the Court set the next Status Hearing in this matter during the week of May 21st (Mr. Kim's lead counsel may be in trial on that date. If so, the Parties will propose another date as soon as possible convenient with the Court.)

**V. Witness Issues**

a. Fact Witnesses

The Parties have no issues to report concerning fact 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.

**VI. Motions**

a. Dispositive Motions

In a written memorandum opinion and order, issued on August 24, 2011, the Court denied three pretrial motions filed by the defense. Pending before the Court is the defense's fourth pretrial motion, a motion to suppress statements.

b. Discovery Motions

The Parties believe that any discovery motions should follow completion of the above-described meet-and-confer process and of classified discovery in this case.

**VII. CIPA**

Once classified discovery has been completed, the Parties can address with the Court the various CIPA procedures and schedule for addressing classified material. It is not possible to suggest a CIPA schedule until the discovery issues have been resolved.

**VIII. Trial**

Given the complexity and sensitivity of the issues likely to be raised in CIPA proceedings in this case, as well as the delays that are frequently concomitant with that process, the Parties estimate that this matter will not be ready for trial before late Fall 2012.

Dated: March 16, 2012

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/s/  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 16, 2012, 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/ \_\_\_\_\_  
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